Exhibit F

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

This Document Relates To:

Track Seven.

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Remote videotaped deposition of
JACK E. FINCHAM, Ph.D.

May 24, 2023
10:00 a.m.

Renee L. Pellegrino, RPR, CLR
(Appearing Remotely)

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ALSO PRESENT:

Kurt Henschel, Videographer

Samantha Misischia, Motley Rice

Amanda Unterreiner, Motley Rice

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THE VIDEOGRAPHER: We're on the record at 10 a.m. Today's date is May 24, 2023. This is in the matter of National Prescription Opiate Litigation. The witness today is located in Mount Pleasant, South Carolina.

Please note that this deposition is being conducted virtually by Veritext. The quality of recording depends on the quality of camera and microphone and internet connection of participants. What is heard from the witness and viewed on the screen is what will be recorded.

Would counsel please state appearances for the record and whom you represent, beginning with the noticing attorney?

MS. WOHL: This is Gabriele Wohl from Bowles Rice representing Kroger.

MR. ELSNER: And this is Michael Elsner from the law firm of Motley Rice on behalf of Montgomery County.

MS. BAVERMAN: Jessica Baverman from the law firm of Vorys on behalf of Kroger.

MR. DYE: This is Jordan Dye from the law firm Bowles Rice for Kroger.

MS. BOBBITT: Ebony Bobbitt with Motley Rice for the Plaintiff.

MS. SALTZBURG: And this is Lisa Saltzburg with Motley Rice for the Plaintiff.

MR. ELSNER: I believe my paralegal -- one of my paralegals is also on from Motley Rice.

THE REPORTER: Can you give me the name?

MR. ELSNER: Sam Misischia and Amanda Unterreiner.

JACK E. FINCHAM, Ph.D., of lawful age, called for examination, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

EXAMINATION OF JACK E. FINCHAM, Ph.D.

BY MS. WOHL:

Q. Dr. Fincham, hello.

A. Good morning.

Q. How are you this morning?

A. Very fine. Hope you are, too.

Q. Great. Thank you.

And we are proceeding remotely.

Is there anyone in the room with you?
A. Mr. Elsner is in the room and that's it.
Q. And I think you've been deposed before; is that correct?
A. That's correct. Yes.
Q. So you know kind of the ground rules here, but if for any reason you don't fully hear or understand a question that I ask you, let me know so I can repeat it, okay?
A. Very good. Thank you.
Q. And if you answer a question, then I'll assume that you both heard and understand; is that fair?
A. Yes.
Q. I try to take breaks about once an hour. If you need a break, just let me know if I'm not getting to one, okay?
A. Very good. Thank you.
Q. Dr. Fincham, is this the only opioid case you've worked on?
A. Yes, it is.
Q. And when did Plaintiff's counsel first reach out to you about writing a report?
A. It was January of this year, 2023.

Q. And I was recently sent an invoice of yours that logged your time through February. Have you been paid on that March invoice?

A. Yes, I have.

Q. And have you spent any more hours on this case since then?

A. The total number of hours that I've spent to date is 106, and that includes what was in that initial billing spreadsheet.

Q. And did you spend time preparing for this deposition?

A. Yes, I did.

Q. How long?

A. Probably 15 hours approximately.

Q. Who did you meet with in preparing for this deposition?

A. I met with Mr. Elsner and two paralegals, Amanda and Sam.

Q. Did you review anything in your preparation?

A. Yes, I did.

Q. What did you review?

A. I reviewed my report, which I had completed. I reviewed both of the Ohio Board

of Pharmacy surveys from 2020 and 2021. I reviewed Ms. Selzer's, Dr. Selzer's report as well as her deposition, and other materials that are listed in my report as far as the references that I utilized.

Q. Dr. Fincham, do you plan to testify at trial in this case?

A. Yes.

Q. Can you tell me what exactly you were asked to do here by Plaintiffs?

A. I was asked to review the report that Dr. Selzer has submitted analyzing the 2021 Ohio Board of Pharmacy survey of pharmacists.

Q. And just review it? Were you asked to rebut it?

A. I was asked to review it and, as a result of that review, I wrote my report.

Q. Do you understand your report to be a rebuttal of Dr. Selzer's opinions?

A. I'm not sure I understand what a rebuttal is per se.

Q. Okay. In what you've submitted, I see a list of two cases that you've testified in or been deposed in, and you mentioned that

you've served as an expert witness and have been deposed in numerous cases over the last 20 years?

A. Yes. That's correct.

Q. Let me ask, as an expert witness were you ever asked to analyze the validity or intent of a survey or questionnaire?

A. Not to this point in time, no.

Q. And were you ever asked to critique another expert's or anyone's analysis of a survey or questionnaire as an expert witness?

A. Not from a legal point of view, no.

Q. And what do you mean by that, "not from a legal point of view"?

A. Because I've reviewed surveys and survey research for the past 40 years thousands of times.

Q. But not as an expert witness?

MR. ELSNER: Objection.

A. As an expert reviewer and as a professional reviewer with credentials to examine survey research and survey methodology.

Q. Okay. Just help me understand your answer. So I asked you if you were ever asked to critique another expert's or anyone's analysis of a survey or questionnaire. You said, I think, not from a legal standpoint. What other standpoint would you have been asked to critique an analysis of a survey or questionnaire?

A. As an academic professor reviewing other individuals' work that were submitted either for publication or as part of their thesis or Master's degree submissions.

Q. You cited two cases, and I want to ask you about the Pamela Tackett case, which I think was a criminal case. Can you tell me what your role in that case was?

A. This was a case that was brought against Ms. Tackett, who was in a car wreck on an interstate highway in South Carolina, the upstate area of South Carolina, and the wreck involved the death of two highway patrolmen and I was asked to comment on Ms. Tackett's use of prescription medications as well as her daily use of THC through marijuana smoking.

Q. So what about the second case,

Vanzant versus Hill's Pet Nutrition; what was your role in that case?

A. As an expert reviewing the FDA processes that are involved when an item is approved for use as a prescription or over-the-counter item.

Q. And you were an expert witness in both of these cases, right?

A. Yes, I was.

Q. What was your expertise that you relied on for your opinions in those cases?

A. Okay. Pertaining to the case in South Carolina that involved the marijuana, for 30 years I've been involved with the Food and Drug Administration evaluating adverse drug reactions and adverse drug experiences.

When I was at the University of Mississippi, we received a grant from the Food and Drug Administration to develop an online ADR reporting, adverse drug reaction reporting system, and as a result of that, I've been asked to serve on numerous FDA committees. Currently I serve on two. One is the Non-Prescription Drug Advisory Committee and the other is the Psychotropic Medication

Advisory Committee. And based upon my experience and work with adverse drug reactions related to prescription medications as well as, in this case, THC, I was retained as an expert witness.

For the second case dealing with Hill's Pet Food -- and there was a case in Illinois, there was also a case in California. And this was based upon my experience with the Food and Drug Administration as a reviewer of grants in the past that have been submitted by academic researchers as well as my service on the two committees that I just previously mentioned. I was retained because of my -- my knowledge and expertise pertaining to the Food and Drug Administration processes, regulations, those kinds of things.

Q. Now, did any of the expertise required in either of those cases inform your opinion in this case?

A. I think that I rely upon my experience over the course of my career pertaining to lots of issues related to medications, medication use, medication misuse, so, most assuredly, I reviewed, for

example, what the Drug Enforcement Administration views as THC and the impacts of marijuana as a Schedule I drug, and certainly with the FDA looking at various types of things pertaining to prescription medications, over-the-counter medications, whether it's for human use or animal use.

Q. Any other cases where you have been retained as an expert witness?

A. There have been numerous cases since the late 1990s.

Q. And what was your area of expertise in forming your opinions in those cases?

A. Again, it was related to adverse drug reactions and the impacts of medications, either positively or negative, upon health outcomes.

Q. Can you explain your area of expertise as it pertains to your work in this case?

A. Okay. It pertains to several things.

First of all, my professional experience as a licensed pharmacist since

1975, and I'm continuously practicing my profession each and every year. So it's based upon my experience as a pharmacist both in an independent community setting as well as a chain community setting, institutional practice, and long-term care practice. So that's -- that's one component.

And, secondly, it relates to adverse effects that pertain to the misuse of medications, perhaps inappropriate prescribing, inappropriate dispensing, those kinds of things, the work environment of pharmacists and pharmacies and how that impacts patient safety.

So all those factors have been part of my career since the 1980s.

Q. What chain pharmacy do you have experience with?

A. At that point in time, it was a Rite Aid pharmacy in greater Atlanta. Robert Thompson was the district manager for that area and I practiced as a relief pharmacist on weekends while I was a faculty member at the University of Georgia College of Pharmacy.

Q. What was the time period for that?

A. It would have been 1986 to 1989.

One thing that I neglected to mention, based upon your question -- excuse me for going back, but it relates to survey research and questionnaire design and development. And since the 1980s and my graduate school education at the University of Minnesota, I've been heavily involved in what is termed field research. It's not bench science, it's not lab research, but it's field research, patients in the -- in the healthcare setting environment.

So I've been involved with surveys and surveying patients, surveying practitioners since the 1980s. So it's almost 45 years at this point in time. I'm familiar, through my training as well as expertise and experience, in survey design and questionnaire construction.

Q. Have you ever worked with any survey research organizations?

A. No, I have not.

Q. Have you ever authored any books about survey research methods?

A. Did you say books? I'm sorry.

Q. Yes, books.

A. Yes. Several books that I have authored, "Pharmacy and the U.S. Health Care System" -- that's in its fourth edition right now -- when dealing with pharmacists and patient care issues, I deal in that book with survey research and survey methodology.

There's another book that was published in 2007, "Patient Compliance Issues and Opportunities," where I talk about how you can assess patient compliance through survey research and methodology.

Q. How many surveys have you been asked to design?

MR. ELSNER: Objection.

You can answer if you know.

A. I have published 70 papers dealing with survey research, survey methodology, and the outcomes of the research that I have conducted. Over and above those 70, I'm involved -- I've been involved in probably 200 survey design and implementation processes.

Q. When you say there's 70 where you were dealing with survey research, did you design the surveys that were involved in those

research projects?

A. Yes. Each and every one of those were designed by me with prior research and examination of what the topic was, how it should be addressed, and what the outcomes of that research should be.

Q. Have you ever designed a survey with real world benchmarks? And do you know what I mean by that?

A. Could you please elaborate what you mean by real world benchmarks?

Q. Where you were predicting behavior and then you are actually able to see what happened and compare what -- your predictions from the survey with what actually happened.

A. Yes. I've done that numerous times.

Q. Can you give me some examples?

A. I sure can.

Patient compliance with medications, patient non-compliance with medications, adverse drug reactions pertaining to the use of medications, the use of tobacco and tobacco cessation methods and methodology, those types of things.

Q. And in those instances you're able to take the real world outcomes and compare them with the outcomes of the survey?

A. That's correct, yes. They were, in fact, predictive-type studies for the most part, but I also did field research studies just assessing what general framework and general components might be of the healthcare system.

Q. And those surveys that you designed that had the real world benchmarks, did you find that the results of your survey accurately predicted what actually happened?

MR. ELSNER: Objection.

You can answer.

A. That's -- that's going to be an answer that I have to respond to with 70 papers. In some cases the predictions were right on the money, some cases they weren't. Regardless of what the outcome was, I published the results. I wasn't trying to seek answer A, B or C. I was trying to give what an ethical outcome assessment was without any type of bias involved.

Q. Have you ever personally created

or administered a survey for pharmacists or pharmacy staff members?

A. Yes, I have, numerous times.

Q. And what are the nature of those surveys?

A. They were asking about their interactions with patients, asking about their satisfaction with their work environment. So I've done that with pharmacists. I've also done it with physician assistants as well as individuals that work within a managed care environment.

MS. WOHL: And I should have asked before we started, but did you all get the box of exhibits that I sent? There were only three.

MR. ELSNER: Yes.

Q. If you don't mind taking those out at this point. One of those should be your report, and I just want to make sure that this is the report that you authored and I have the right one.

MR. ELSNER: Are you talking about tab 2 in the binder?

MS. WOHL: Yeah. I'm not super

familiar with the tabs, but --

THE WITNESS: I do have part of my report in tab 2. It does not list my curriculum vitae, which was Exhibit 1 of that document.

MS. WOHL: Understood. I'm going to make this Exhibit 1 to the deposition.

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(Thereupon, Deposition Exhibit 1, Expert Report of Jack E. Fincham, Ph.D., R.Ph., was marked for purposes of identification.)

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Q. And if you could look at the bottom of page 1, starting with the last sentence and ending on page 2 of your report, you state that in your pharmacy and public health classes you taught research methods -- research design and methods courses that involved research design, focusing on survey research and questionnaire design. Is that a fair summary?

A. Yes, it is.

Q. Do you remember any of the materials you created for those courses that

addressed survey research and questionnaire design?

MR. ELSNER: Objection.

You can answer.

A. I have thousands of pages of reference materials that I utilized in developing these courses. I constantly made sure that the data that I was presenting was up to date and current, so I used literature sources, I used textbook sources, and I used examples of poorly designed questionnaires and surveys.

Q. Do you know roughly how many of these college courses and, I guess, Master's courses that you taught specifically covered survey research and questionnaire design as part of the course curriculum?

MR. ELSNER: Objection.

A. 15 courses in four major colleges and universities in the United States.

Q. Are you currently teaching?

A. Yes, I am.

Q. And when was the last time you taught a class that integrated survey research and questionnaire design into the course

curriculum?

A. It would have been two years ago.

Q. And we talked about this a second ago. On page 2 of your report you mention that 70 of your 255 papers published in medical journals have been the result of questionnaire and survey research. How did you calculate that total of 70 for this statement?

A. Basically just counted the number in that 200 -- it's not 260, but 255 published papers that dealt with questionnaire research, design and survey methodology. I just simply went through and numbered them.

Q. Are each of these papers integrating the results of questionnaires and surveys?

A. Yes, they are.

Q. Of different -- are each of them about a different survey?

MR. ELSNER: Objection.

You can answer.

A. I don't have total recall of the entire components of each of these 70. Some of these were papers that were an additional

paper based upon a previously published study that I did that looked at a survey and survey methodology. But I would say of the 70, 65 of them I would estimate -- that's just an estimate, please -- 65 would be independent and mutually exclusive based upon the other 65.

Q. In any of these publications did you analyze the intent of the person or organization conducting the survey or questionnaire?

A. I was the one that was doing the conducting of the survey, so I thoroughly analyzed what I was doing, why I was doing it, and what the results were to be used for.

Q. In any of your other publications have you analyzed the intent of the purpose -- of the person or organization conducting the survey or questionnaire?

A. Yes, I have.

Q. Do you recall any specific examples?

A. I'd have to go through those 250-some papers to tell you which ones. I don't have it at the tip of my tongue.

Q. Are you currently a practicing pharmacist?

A. Yes, I am. I'm licensed to practice in the state of Colorado, and because the federal government does not require a specific license other than a state license, I'm able to do things within a federal capacity if and when I need to do so. I'm currently a volunteer with the Medical Research Corps of Southern Arizona, and in that capacity they allow me to use my Colorado pharmacy license to practice at certain components within areas where I am.

Q. And when you're not in that federal capacity -- I'm sorry. Can you explain the federal capacity practicing to me?

A. All right. The federal government does not require that you have a pharmacy license within a federal government component agency. So if you work within the VA system or you work as a volunteer in some type of a federal organization, you just have to have a state pharmacy license. It doesn't matter what that state is or where that state is. It might be -- in my case I live in Arizona but

the state where I am licensed is the state of Colorado.

Q. And you mentioned an organization that you volunteer with. What is that?

A. It's the Medical Reserve Corps of Southern Arizona, and this is an organization made up of nurses, pharmacists, physicians, nurse practitioners, physician assistants that provide care and services in a community outreach type of setting.

Q. And you practice pharmacy in connection with that organization?

A. Yes, I did.

Can I elaborate with a specific example --

Q. Yes.

A. -- please? Okay.

During the initiation of the COVID vaccination process in Tucson, Arizona, one of the major metropolitan healthcare hospitals in Tucson, the Tucson Medical Center, set up what was called a drive-thru vaccination clinic, and they sought volunteers that had experience in vaccine preparation, vaccine administration that were credentialed in order to provide

vaccinations, and so I volunteered through the Tucson Medical Center drive-thru COVID vaccination process for six months. I prepared individually 15,000 COVID vaccinations for administration. So I worked three days a week eight hours a day for those three days to provide the preparation of those vaccinations, administer those vaccinations, and oversee the process to make sure that sterile practicing was provided and that clean and accurate administration was occurring.

Q. And this was in Arizona?

A. It was in Tucson, Arizona at the Tucson Medical Center.

Q. And where do you practice in the state of Colorado, if you do?

A. I have a license in the state of Colorado. I haven't practiced in Colorado since we left Colorado for me to pursue graduate studies at the University of Minnesota in 1980, but I've been licensed for 48 years in the state of Colorado.

Q. And other than your work with the COVID vaccines, when was the last time you dispensed medication as a pharmacist?

A. That was it.
Q. And did you -- when you were practicing as a pharmacist, were you practicing -- you mentioned some experience with Rite Aid. Did you have other experience in a pharmacy?
A. Yes, I did.
MR. ELSNER: Objection.
Just give me one second.
Just object to the form.
Go ahead.
A. Upon graduation from pharmacy school in 1975, we moved to western Colorado, a city called Montrose, and at that -- in Montrose I was a part-owner of a community pharmacy and I was the pharmacist manager for that pharmacy for five years. And I also practiced in a long-term care facility as a consultant pharmacist for three nursing homes in the Montrose County area. So that's as an independent pharmacy owner, pharmacy manager, and practitioner.
Q. And in your experience in the independent pharmacy and the chain pharmacy, did you dispense opioid medications?

A. I certainly did, yes.
Q. And I take it the last time you did that would have been in the 1980s? Did you say 1980 is the last year you practiced?
MR. ELSNER: Objection.
Go ahead.
A. It would have been in the 1990s, late 1990s. What I tried to do when I started my academic career was each and every summer or break period I wanted to work in a pharmacy setting so I could keep current with what the demands, current environment and practice components might be, so I did that religiously throughout my academic career.
Q. So you practiced in a pharmacy every summer. What were the years that you did that?
A. Okay. That would have been through 2004, and then from 2004 until my academic retirement, at least as a full professor, in 2018, I would spend time in pharmacies each and every year, whether it was an independent, a chain or a community pharmacy, to just see what was going on, how it was being done, what some impacts might be

upon the pharmacists.

Q. So during those summers where you were spending time in a pharmacy until 2004, were you dispensing medication?

A. I was observing the dispensing. I wasn't doing the actual dispensing myself.

Q. Okay. And then between 2004 and 2018, when you were spending time in pharmacies, were you dispensing medication?

A. No.

Q. Are you still practicing pharmacy -- are you a practicing pharmacist right now?

A. I consider myself to be a pharmacist, and my current practice is I provide medication-related coursework for senior citizens through what's called the University of Arizona OSHER, O-S-H-E-R, Life-Long Learning Program. I've done five courses with that component. I also interact with faculty and students at the University of Arizona College of Pharmacy. In that capacity I consider myself to be a practicing pharmacist in how I perform my duties and interactions with those individuals.

Q. But since you were giving out COVID vaccines, have you dispensed medication at a pharmacy or given vaccines at a pharmacy setting?

A. No, I have not.

Q. Have you done anything in a pharmacy setting since your work with the Medical Reserve Corps in southern Arizona?

A. Well, I'm still with the Medical Reserve Corps, but recently I have not, no.

Q. And when was the last time you did work with them?

A. It would have been 2022.

Q. And have you ever served as an expert witness in a case that concerned opioid dispensing?

A. Yes.

Q. Which one was that?

A. This was a case in Little Rock, Arkansas, and it was a case involving the misprescribing and administration of a fentanyl dose to an infant child in the medical center in Little Rock, Arkansas, and the baby passed away and I was brought in to speak to fentanyl administration, prescribing

and dosing for pediatric populations.

Q. And did you offer an opinion in that case?

A. Yes, I did.

Q. Can you tell me the nature of that opinion?

A. The nature was that this was a misprescribed fentanyl dose on the part of the physician, and it -- it should not have been dispensed by the pharmacy for administration to the patient because of the problems associated with how this dosing was calculated and was to be administered.

Q. Do you recall the pharmacy that dispensed this medication?

A. It was the medical center pharmacy in Little Rock, Arkansas.

Q. In your experience as an expert witness, what kind of work have you done on pharmacy practices and standards of care?

MR. ELSNER: Objection.

Go ahead.

A. There have been several cases that involved pharmacy errors, misdispensing of medications to patients, the wrong drug for

the wrong patient at the wrong time, and I was asked to provide input on what that was and what the problems were in that dispensing and administration process.

Q. Anything else?

MR. ELSNER: Objection.

Go ahead.

A. No.

Q. Have you ever been qualified as an expert by a court?

A. Yes, I have.

Q. In which cases?

A. I don't have the number of cases at the tip of my tongue, but this goes back to 1996, and since 1996 through the present there's probably been 20 to 25 cases that I've been involved with and approved as an expert witness.

Q. Have you ever been proffered as an expert witness but not qualified?

A. No, I have not.

Q. Has a court ever limited your testimony?

A. No, they have not.

Q. Are you familiar with the 2022 CDC

guidelines for prescribing opioids for pain?
A. Yes, I am. I'm very familiar with those guidelines. I use those materials in coursework that I present to doctor and pharmacy students at several universities and colleges of pharmacy in the United States.
Q. Do you agree with the current guidelines?
MR. ELSNER: Objection.
A. I can see where these guidelines were important, why they were important, why they need to be followed and how they can be used by pharmacy practitioners in a practice setting.
Q. Is there anything in the current guidelines that you don't agree with?
MR. ELSNER: Objection.
A. No, I do not.
Q. Sorry. You do not what?
A. I do not disagree with any of the current guidelines.
And just as a point of reference, I was the first pharmacy faculty member in the United States across the country to utilize these guidelines in coursework in colleges of

pharmacy in the pharmacy schools.

Q. Turning to your report and the Ohio Board of Pharmacy surveys, the Ohio Board of Pharmacy repeatedly said that the 2020 and 2021 surveys were about working conditions; is that right?

MR. ELSNER: Objection.

A. In my estimation, respectfully, please, that's a very limited view of what they were looking at.

Q. Okay. Is it your opinion that these surveys were about opioids?

A. I'm sorry. I didn't understand your question.

Q. Is it your opinion that these Ohio Board of Pharmacy surveys were about opioids?

A. They included components that certainly embraced the problems associated with opioid dispensing.

Q. On page 5, if you could turn there with me, of your report, at the beginning of the last paragraph you write, "Over the last 20 years, there has been growing concern among pharmacists, boards of pharmacy and trade associations related to working conditions in

retail chain and grocery store pharmacies."

Do you see that?

A. Yes, I do.

Q. And what complaints are you referring to in this instance?

A. Because state pharmacy boards are public entities, they produce documents that show what complaints have been made, by whom, how many, those kinds of things, so that's where that construct comes from.

Q. Are you referring to any specific complaints that you recall here?

A. There have been numerous complaints in each of the 50 states related to this issue.

Q. Have you reviewed complaints to the state board of pharmacies in every -- each of the 50 states?

A. No, I have not.

Q. Do you recall any specifically about Kroger?

MR. ELSNER: Objection.

A. I'm not sure what -- if what I'm going to answer is necessarily considered, quote, unquote, complaint, but rulings and

findings from court cases have indicated such problems with dispensing of opioids in Kroger pharmacies.

Q. And what rulings and findings are you talking about?

A. Well, specifically in the state where you're located this morning, West Virginia settled with Kroger for 68 million dollars.

Q. And you would consider that a ruling or a finding by a court?

A. Yes, I would.

Q. In what way?

A. Well, I'm not an attorney, okay, but when I see a settlement that's 68 million dollars that Kroger paid, then that indicates to me that it was a settlement.

Q. I agree with you that it was a settlement. Does that settlement influence your opinions -- does that settlement influence your opinions in this case?

MR. ELSNER: Objection.

A. I looked at this particular case that we're talking about this morning as an independent viewer of what the particular

situation was without trying to weigh in any other factors from any other cases.

Q. So when you wrote this sentence, though, what -- I believe you just told me there were numerous rulings and findings pertaining to Kroger specifically. What are you referring to when you said that?

A. Okay. The association that monitors each and every one of the 50 boards of pharmacy in the United States is the National Association of Boards of Pharmacy. And NABP, again, it's a public entity and they have reported findings, other types of things pertinent to what I was writing in this particular paragraph.

Q. And specific to Kroger?

A. I don't know specifically if Kroger was identified, but large chain community settings, which obviously includes Kroger, would have been involved.

Q. You also mention in this paragraph DEA cases that have warned about pharmacies utilizing metrics and other incentives.

Do you see that?

A. Yes, I do.

Q. Which DEA cases are you referring to?

A. I'm not sure if I can identify a specific case.

Q. Any of them dealing with Kroger?

MR. ELSNER: Objection.

A. I can't recall that off the top of my head.

Q. On page 8 of your report, the last paragraph that starts out, "Organizations conduct different types of surveys," the second sentence there states that, "The Ohio Board of Pharmacy conducted its surveys to gather information about existing workload conditions that required further study, and not necessarily to understand what all Ohio pharmacists believe."

Can you explain that sentence to me?

A. Yes. I certainly can try. It goes back to what the particular survey was supposed to be doing, okay. And when you construct a survey, you consider what is it that you're trying to examine, how are you going to examine it, and what are you going to

use the results of that process or that research to do. And if you look at the study that we're talking about in the state of Ohio with workload conditions, it wasn't trying to predict anything, it wasn't trying to estimate what something might be. It was just simply understanding component field research to try to look at what the general working conditions were as stated by pharmacists that were licensed to practice pharmacy in the state of Ohio. It wasn't trying to predict anything. It was just to get a general sense of what the state of practice components might be affected by workplace environments.

Q. Is it your opinion that this -- these surveys were not -- let me rephrase that.

Is it your opinion that it was not the purpose of the surveys to understand what all Ohio pharmacists believed?

MR. ELSNER: Objection.

A. You couldn't conduct a survey to analyze what all pharmacists consider. This was just to try to get a general sense of workplace conditions that impacted patient

safety in the practice of pharmacy in these settings in Ohio.

Q. On page 10 of your report -- if you could flip there -- you talk about the response rate, and the last sentence of that top paragraph says, "In my opinion the response rates for pharmacists responding to the 2020 and 2021 survey was adequate and appropriate."

What do you mean by adequate and appropriate here?

A. And, again, what all this goes back to is what the purpose of this survey was for, okay. And it wasn't to try to predict anything. It wasn't trying to estimate anything other than what the working conditions were in the state of Ohio for pharmacists in the two years that this study was conducted.

And if you look at the response rate that you see in this study, it's very similar to the response rates that you could see in other state surveys, West Virginia, Missouri, as well as national surveys that were conducted by the American Association of

Pharmacists, the APhA studies, that looked at workload conditions, working conditions, working environment, and if you consider the response rate in these Ohio studies with those other studies that I just referenced, it's very, very similar, if not the same.

Q. You referenced three just now surveys, in West Virginia, Missouri and national. When was there a West Virginia Board of Pharmacy survey conducted?

A. I do not recall.

Q. Do you recall what the response rate in that survey was?

A. It was very similar. I can't give you the exact specificity of what the response rate was, but it was very similar as far as the percentage of respondents.

Q. What was the West Virginia survey about?

A. Workload conditions in pharmacies.

Q. And I looked through your materials considered in your report and I'm not sure I saw a West Virginia Board of Pharmacy survey. Do you think -- is that in there? Is that something you considered?

A. It's not something I considered. I just know that they did a study and I looked at the results but I didn't include it in the paper that I -- or the report I presented and prepared.

Q. Okay. So you believe there is a study done but you're not sure when; is that right?

A. That's correct.

Q. And you don't know the response rate but you believe it was about 20 percent?

A. It was more than that. I can't tell you exact percentage.

Q. Do you know how much more than the Ohio survey response rate it was?

MR. ELSNER: Objection.

A. No, I do not.

Q. Now, the Missouri survey, that's what you supplemented your report with recently; is that right?

A. That's correct.

MR. ELSNER: That's not true, actually, counsel.

MS. WOHL: I'm sorry. That was Oregon. Okay. My mistake.

Q. Do you recall the year that the Missouri Board of Pharmacy did a survey of workload conditions?

A. I can't give you the exact date, but I think it was around 2014.

Q. Was this part of your materials considered?

A. Yes, it was.

Q. And do you recall the response rate in the Missouri Board of Pharmacy survey?

A. If you could give me a minute, I could go to the exact spot and tell you.

Q. Okay.

A. It's footnote 117. I have to look at the exhibit to tell you what the date of that survey was precisely.

Q. Okay. Do you recall the response rate in the Missouri Board of Pharmacy survey?

MR. ELSNER: Objection.

Q. I'm sorry. That's what I just asked you, isn't it?

Okay. And you also cited to a national pharmacy workload survey?

A. Yes.

Q. And do you recall the year that

the national survey was done?

A. Again, I'd have to go to the footnotes to pull up the exact date. I don't recall what the date was. The Missouri Board of Pharmacy survey was 2019. That's on page 27, first paragraph, halfway down the page.

Q. Can you recall the response rate of the national board -- or the national pharmacy survey?

A. It was in the range of the 20 percentile. I can't tell you exact amount.

Q. Were there any other surveys that you're referring to in this sentence on page 10?

A. On page 10?

Q. Yes, about similar surveys.

MR. ELSNER: Objection.

A. Where specifically on page 10 are you referencing?

Q. It's the last sentence on that first paragraph, "Similar surveys assessing the status of work environment for pharmacists."

A. Those are the ones that I'm referring to.

Q. Okay. Do you agree that survey response rates are a factor to consider in determining the quality and validity of a survey's results?

A. I can't agree with that statement as you stated it.

Q. Would a higher response rate to the Ohio Board of Pharmacy surveys have yielded results that more accurately reflected the opinions of all pharmacists in the state of Ohio?

MR. ELSNER: Objection.

A. I can't answer that question without elaborating.

Q. In your opinion, do the Ohio Board of Pharmacy surveys represent accurate cross-sections of the Ohio pharmacists at the time?

A. That was not the purpose of the study, to do that particular thing that you're pointing out.

Q. Regardless of a purpose, is it your opinion that the surveys do represent accurate cross-sections of all Ohio pharmacists at the time?

MR. ELSNER: Objection.

A. I can't agree with your premise statement.

Q. Are you familiar with the concept of weighted data in surveys?

A. Yes, I am.

Q. Can you explain that to me?

A. Okay. That is a particular type of study that's disparately different than this survey and the intent of this survey. A weighted data survey would look at a survey that was conducted to do some type of a prediction and some type of an assessment from a statistical point of view of the validity of the data that was collected, and it might include any number of factors that include demographics, other types of things that you can weigh in and use to assess whether or not what you found is accurately representing what it is that you wanted to find. That's not the purpose at all in any way, shape or form of what the Ohio surveys were intended to do. It wasn't to be predictive, it wasn't to have any kind of a statistical component associated with it other than to look at the general

workplace conditions that impacted patient safety in pharmacies in the state of Ohio.

Q. You repeated this a couple times. I want to make sure I've got this right. The Ohio Board of Pharmacy surveys were not meant to represent the Ohio pharmacists at large?

MR. ELSNER: Objection.

A. You have to look at specifically why these studies were conducted. They were conducted to look at general work conditions as perceived by pharmacists that responded to the survey. It wasn't trying to predict anything. It was simply trying to assess what the current situation was and factors that impacted pharmacists and their ability to practice pharmacy.

Q. So, again, they were not meant to represent the thoughts and feelings and conditions of all Ohio pharmacists, correct?

A. That was not the purpose of the study, no.

Q. So when you say the purpose of the study was to understand general working conditions of pharmacists, do you mean that it was general working conditions of only the

pharmacists who responded to the survey?
MR. ELSNER: Objection.
A. I can't agree with that statement.
Q. Why not?
A. Because that wasn't the purpose of the study. The purpose of the study was to get a general assessment of workplace conditions as perceived by pharmacists that responded to the surveys.
Q. So the assessment of workplace conditions that the Ohio Board of Pharmacy got out of this survey is limited to the perceptions of the pharmacists who responded; is that a correct statement?
MR. ELSNER: Objection.
A. I can't agree with that statement.
Q. Why not?
A. The use of the term "limited" is confusing. I think that you have to look at the results that were found as they were presented, both the Likert scale items with the numerical value associated with them, a percentage value associated with them, as well as the verbal comments.
Q. When you say you have to look at

those, are you expressing that's why you can't agree with that statement about the general assessment?

A. Could you please repeat your question in its entirety?

MS. WOHL: Could I have the court reporter read that question back?

(Recess had.)

Q. That was the question. Thank you.

A. The purpose of the study was to get an assessment of pharmacists' perception of workplace conditions, and that's what they responded to both in their Likert scale items as well as their verbal responses.

THE WITNESS: Would it be possible to take a break, please?

MS. WOHL: Yes. Why don't we take a ten-minute break.

THE VIDEOGRAPHER: Going off the record, 10:55.

(Recess had.)

THE VIDEOGRAPHER: On the record, 11:07.

BY MS. WOHL:

Q. Dr. Fincham, I want to go back to

the questions that we left off on and make sure I understand what you're saying here.

You said a few times that the purpose of the survey was to get a sense of the general working conditions at Ohio pharmacies; is that correct?

A. Yes.

Q. But do you agree with me that the workplace conditions of the survey gives you a sense of the conditions of the pharmacists who responded? Do you agree with that?

MR. ELSNER: Objection.

A. I think that you can take that at face value, but you also have to realize that there were data points that were collected, but based upon how many years of experience somebody had, where their practice site was, whether it was in an institutional setting, an independent setting, a large chain setting, a food market-based pharmacy. Those types of demographic information items were collected.

Q. Are you saying that because they collected those demographic data information, you can tell from the responses about workplace conditions of pharmacists who did

not respond to the survey?

A. You can't predict what somebody didn't respond to, but what you can look at is what was stated by those that did make an opinion stated either through the Likert scale responses or the verbal responses.

Q. I think we agree on that point.

Dr. Fincham, you also talked about the West Virginia settlement, and I want to go back to that.

Where did you learn about the Kroger settlement in West Virginia?

A. Ms. Wohl, it was just simply an online assessment of other lawsuits that have been brought against various chain pharmacies, and I just saw that online as a settlement that was reached in the state of West Virginia versus Kroger.

Q. And does that settlement support any of the opinions that you've made in this report?

MR. ELSNER: Objection.

A. Ms. Wohl, I did not even consider that report or that finding in the report that I presented that we're looking at this

morning.

Q. Do you believe that, you know, after the fact that it supports what you've said in your report?

MR. ELSNER: Objection.

A. Again, I didn't look at that report in its entirety. I just simply saw the dollar value and left it at that. I didn't pursue it any further.

Q. Does it have any relevance to your opinions in this report?

A. I'd have to look at what it is that was stated in that document to see whether or not that it supported or didn't support what it is that I wrote. In my mind it's just not pertinent to what we were looking at here today.

Q. I'm going to ask you to look at what I think might be tab 1. It's an article you authored in 2008.

Do you see that?

A. Yes. I am there.

Q. This is going to be our Deposition Exhibit 2.

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(Thereupon, Deposition Exhibit 2, Article Entitled "Response Rates and Responsiveness for Surveys, Standards, and the Journal," was marked for purposes of identification.)

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Q. Am I right about that? Is this a 2008 article you authored for the American Journal of Pharmaceutical Education?

A. Yes. That was published at that point in time. It's been referenced by other authors in refereed manuscripts over 1,500 times.

Q. And you were the associate editor of the American Journal of Pharmaceutical Education at the time; is that right?

A. Yes. For ten years I was in that capacity.

Q. And under the heading Expectations for Survey Response Rates, the first sentence is, "There are now higher expectations for survey response rates."

Do you see that?

A. Yes, I do.

Q. And you've got below that "Response rates approximating 60 percent for most research should be the goal of researchers," correct?

A. That's correct.

Q. And "For survey research intended to represent all schools and colleges of pharmacy, a response rate of 80 percent is expected"?

A. Yes.

Q. You've also got under the last full paragraph on that first page, "Non-response bias is a deadly blow to both the reliability and validity of survey study findings"; is that right?

A. Yes.

Q. So for the Ohio 2021 Board of Pharmacy pharmacists' workload survey, the response rate was somewhere around 20 percent, right?

A. Yes.

Q. And you believe that 20 percent is a sufficient response rate to prove the validity of that Ohio Board of Pharmacy survey; is that right?

A. I do based upon what the purposes of that study were. And if you look at this particular published paper that we're referencing right now, this was focused on academic researchers and schools and colleges of pharmacy throughout the United States and Canada that were publishing findings that were to be predicted within a certain percentage of what accurately might be assessed when you look at a survey and the survey data and the results.

So the types of studies that we're looking at in this particular paper, that I'm referencing in this paper, are night and day different from the survey that was conducted that was a field study in the state of Ohio. So the studies that are referenced here in this paper deal with specific predicting types of questionnaire items rather than assessing what the general framework of something might be.

So the studies that are published in the AJPE have to deal with predicting how students are going to respond to a particular course, how faculty are going to respond to a

particular course. So you do a defined sample -- in some cases it's a weighted sampling process that then you can look at and see whether or not it was valid.

One of the factors you look at is the response rate. That's not what you do with field studies that we're talking about with the State of Ohio surveys.

Q. Explain to me what a field study is, please.

A. A field study is conducted as a general assessment of what factors are in an environment, and we're looking, for example, in the state of Ohio, what the pharmacists' perception of their workplace conditions are. And some of the demographics that were obtained dealt with institutional practice, chain pharmacy, food market-based pharmacy, et cetera. So it wasn't trying to predict anything. It was trying to just see what the general field conditions were as perceived by pharmacists of their working conditions.

Q. In a field study like that is the response rate unimportant?

A. The response rate is not as

important as it is in a statistically focused, parametrically designed study that looks at specific statistics and statistical analyses, et cetera.

Q. So in those studies a response rate of 60 to 80 percent is appropriate but in field studies you would aim for a response rate of 40 percent?

A. That's a general assessment that I would agree with, yes.

Q. And do you know whether similar experts in the survey field would agree with that assessment, that field study response rates should generally aim for a 20 percent figure there?

A. I can agree with that statement, and I can look at the researchers that did. For example, the APhA study, John Stomer from the University of Minnesota. He has published numerous papers that deal with field research-type topics. And looking at the response rates that we achieved here in Ohio versus what was achieved in the national study are very, very similar, and they're accepted, they're considered to be valid in their

design, in their analysis.

Q. Responding to this Ohio Board of Pharmacy survey, this was voluntary; is that right?

A. That's correct.

Q. Doesn't the non-responsive rate at least raise a question of whether the pharmacists who chose to respond are different in some way than those who chose not to respond?

A. I can't agree with that.

Q. Why not?

A. Because what the pharmacists indicated in their Likert scale responses, their satisfaction, dissatisfaction, et cetera, were mirrored very closely in some of the items that were listed in the verbal or written responses that they provided. And the number of written responses in both the Ohio surveys was really very, very large. It's rare to have that many people respond as they did not only in the numbers that we're talking about but within the framework of each individual's response. Some of these were elaborately detailed paragraph after

paragraph.

Q. So what do those comments then, the details that you're talking about, tell you about the pharmacists who chose not to respond to the survey?

MR. ELSNER: Objection.

A. I can only tell you what the pharmacists that did respond verbalized, and the quality of the components of what they described was, to me as a pharmacist, disturbing. My blood boiled. It was absolutely disgraceful that pharmacists would be put in this type of environment and have to practice as they did with the constraints under which they practiced.

Q. So, to be clear, the responses that you reviewed, do they to you indicate any conditions or feelings that any of the Ohio pharmacists who did not choose to respond to the survey may have had?

MR. ELSNER: Objection.

A. I can only speak to what the responses were that I read.

Q. Thank you.

A. And as a pharmacist, I'm going to

reiterate, it was incredibly disturbing to see my profession treated as these respondents indicated that they had to practice, and the stresses, the strains, the absolute astounding negative conditions in which they were expected to take care of patients.

Q. Were these results surprising to you?

A. The results were not surprising because I have taught in schools of pharmacy about proper activities that pharmacists should be participating in that they need to be supervised with and for. It wasn't surprising that I saw it. What was surprising was the breadth and depth of the negative aspects of these individuals' practice environments. It was disturbing to me as a pharmacist. You can call me lots of things. The thing I am most proud of is I am a pharmacist, and this was so disturbing that it absolutely astounded me, the breadth and depth of the negative aspects of these individuals' expected practice environments. I knew that it would be bad, but I didn't expect it to be this horribly bad.

Q. On page 8 of your report, you state that responding pharmacists likely viewed the surveys as a sincere effort by the board to understand how pharmacists' workloads impact patient safety, right?

A. Yes.

Q. And you note some of the written comments that you've talked about, and you note that some of them even requested that the board take action to improve working conditions and patient safety, right?

A. Yes.

Q. Is it possible that the pharmacists who chose to respond to the survey were more likely to be those pharmacists who wanted the board to take action?

A. I can't agree with that statement. You don't know.

Q. And you put throughout your report comments that pharmacists chose to write indicating their dissatisfaction with their current work environment, right?

A. Yes.

Q. Is it possible that the pharmacists who chose to take this survey were

more likely to have complaints to voice about their work environment than the pharmacists who did not respond?

MR. ELSNER: Objection.

A. I can't agree with it.

Q. Why not?

A. You simply do no know.

Q. Is it possible that many of the 80 percent of pharmacists who chose not to respond to the survey simply did not have as many complaints about their workload and patient safety?

A. You can't make that assessment. They could be worse, they could be equal, they could be better as to how they viewed their environment. They just simply did not choose to verbally respond in writing.

To be honest with you, I don't think that that needs to be the focus. My concern would be let's look at what these individuals who did respond actually said from a qualitative standpoint.

Q. Thank you.

A. You practice in an esteemed environment, and when I was a dean -- when I

wasn't a faculty member, when I was a dean overseeing a thousand people, if one individual would state some of the things that were stated in some of these comments, it would absolutely be all that I needed to do to make a change. And I'm not trying to put myself in your position, but if somebody in your firm -- for example, one of the women, page 82 of the 2021 study, indicated that she had been pregnant for 40 plus weeks, she wasn't able to take a break to go to the bathroom or to eat. If that environment was present at any place where I had worked in my life, things would be done differently immediately because of the severity of that. It didn't matter whether this was one person or ten persons that made this comment. One was all I would need to see. And I'm not sure what you would look at in your firm, but one individual with these kinds of working conditions would mean, in my estimation, to make some changes immediately.

Q. On page 10 you discuss Dr. Selzer's comments on the proportion of large chain grocery respondents, the

proportion change between '20 and '21. Do you recall that?

A. Yes.

Q. And you actually say her analysis is misleading. Was there not a change in the proportion of these types of respondents between those two years?

MR. ELSNER: Objection.

A. The change was obviously there, but the impact of that change and the importance of that change in my mind just wasn't important.

Q. Okay. But you do understand what she's saying here about proportion, that the respondent pool is made up of a larger percentage of large chain grocer pharmacists than it was in 2020?

MR. ELSNER: Objection.

A. I can't agree with her statistical analysis.

Q. About the proportion of the respondent pool?

A. The increase of 50 percent for respondents in this study.

Q. I'm sorry. What was that?

A. I said that she states in that paragraph that it was -- there was an increase of 50 percent of respondents in this setting, it was 24 percent of responding pharmacists in 2020 and 36 in 2021. In fact, it's 71 individuals, an increase of about 7 percent. So I don't agree with her statistical findings.

Q. But you agree with the numbers 24 percent and 36 percent, correct?

MR. ELSNER: Objection.

A. I'd have to go through and do the calculation, which I didn't do.

Q. Okay. And your -- regardless of the calculation being correct, your opinion that the number of large chain grocer respondents only had a seven-person change over those two years and that makes that change insignificant to the survey results?

A. In my estimation, yes.

Q. So the hard number, that seven-person change, is the more important number rather than those proportion numbers that Dr. Selzer was looking at in your opinion, right?

A. You said seven. Do you mean 71?
Q. Yeah. I'm sorry. 71.
A. That seven percent seems irrelevant to me.
Q. Okay. You explain this increase by citing the Ohio Board of Pharmacy annual report for 2020 which says there were 1,000 new pharmacists in 2020.
Do you see that?
A. Okay.
Q. And you actually say on the bottom of page 10 had Dr. Selzer looked, she may have begun to answer her other questions by reviewing the annual reports. What do you mean by that?
A. I think that she didn't analyze why the survey was done, what was the purpose of the study. She didn't do that component.
Q. And that -- I'm sorry. Is that your answer to what I'm asking here; had she looked at these annual reports, she may have begun to answer her other questions?
MR. ELSNER: Objection.
A. You know, I'm sorry. I can't predict what Dr. Selzer would or wouldn't do.

Q. I'm asking you what that sentence in your report means when you say had Dr. Selzer looked at these reports, she may have begun to answer her other questions?

A. That she needed to look at what the survey purpose was, why was the survey done, how was it to be administered, and what were the results that were found to be used for.

Q. And you recall in her report that she uses the Board of Pharmacy's own words in terms of what the purpose of the survey is, correct?

A. Can you direct me to that part of her report that you're referencing, please?

Q. Yes. Give me a second. On page 46 of Dr. Selzer's report, if you have that --

A. Yes, I do.

Q. -- she cites Mr. McNamee's testimony with regards to the purpose and intent of the survey.

A. Yes.

Q. Do you disagree with any of that?

MR. ELSNER: Objection.

A. This is a verbatim statement of

what was stated by Mr. McNamee in his -- his deposition.

Q. Okay. So you agree that that's the purpose of the Ohio Board of Pharmacy surveys?

MR. ELSNER: Objection.

A. The intent of the survey was to capture vital feedback on pharmacists' working conditions in the state.

Q. Do you agree with that?

A. Based upon my assessment of the survey, I would agree with that.

Q. Okay. So you just told me that Dr. Selzer did not analyze the purpose of the survey, so what do you mean with that criticism of her report?

A. I'm referencing the fact that she's looking at response rate as a key component. And if you look at a field study, response rate is not a major factor that needs to be considered. What you need to consider is the totality of the responses and the perception of what you're trying to gather. This was not to be in any way, shape or form some type of an analytical prediction survey.

It was an analytical field study only.
Q. Is it part of your opinion in this case, your written opinion, that this was a field study and response rates are not as important in field studies?
MR. ELSNER: Objection.
A. That's correct.
Q. Can you point me to where in your written report that appears? And I ask because I did not see anything about the purpose and meaning of a field study in your report.
A. Do you want me to go through the entire report to come up with the specific item? If that's the case, you're going to have to give me some time to do that.
Q. No, I don't think that's necessary. I just did a quick word find on field study and didn't see it. Is there another term I should search for pinpointing when you talk about that?
A. The purpose of the study.
Q. The purpose of the study.
A. So when the Ohio Board constructed this survey, they didn't say it was going to

be a field study, but my assessment of what was done, in my perception, my experience, in my expertise, indicates that this is a field study. That's perhaps an academic, definitive term that somebody like the Board of Pharmacy didn't feel they needed to use. They simply needed to state what they were doing. My view of what this is is from the perspective of somebody that studied and analyzed surveys and survey research and questionnaire design my entire career.

Q. Can you turn to page 11 of your report, please? In the last page -- or the last sentence of page 11 you state that in my opinion, the Ohio Board of Pharmacy surveys were valid and appropriate for their purpose and use. And you talked a lot about the purpose, and I believe we have the Ohio Board of Pharmacy's stated purpose of the surveys. Can you explain to me what you mean by "use" in that sentence?

A. Okay. Looking at what was the purpose of the study, to get a general sense of working conditions, all right? And when I say "use," then the Board of Pharmacy would

choose to do what it is that they felt necessary in response to what these surveys found. So what I'm trying to say was that this survey was valid from the standpoint of what it was intended to do, how it was to be carried out, how it was administered, and then the purpose and the use -- the use would follow the purpose and the findings from what they did.

Q. Is it your opinion that the purpose included finding out the working conditions specific to dispensing opioids?

MR. ELSNER: Objection.

A. The purpose was looking at general safety conditions that were applicable from the perception of these pharmacists, and if you look at their practice environment, one of the key components of that practice environment is the safe and appropriate dispensing of opioid prescriptions.

Q. Is there a difference in a pharmacist's work when it comes to dispensing opioids versus other prescription medication?

A. There's additional requirements that are put into play, yes.

Q. Were any of the survey questions specifically about dispensing opioids?

MR. ELSNER: Objection.

A. They weren't; however, the assessment of their view of the safety of the environment in which they practice, the stresses that they were under would have a definite impact on how opioids were safely or unsafely dispensed in that environment. So they didn't have to ask a specific question about opioids. It was the general workplace safety environment that resonated with me.

Q. So opioid dispensing, what you're saying, because it's part of the general workload of a pharmacist, you can look at these questions and responses and discern pharmacists' attitudes and concerns with respect to all aspects of pharmacist duties; is that fair?

MR. ELSNER: Objection.

A. Could you repeat the question, please?

Q. Well, let me start here. Opioid dispensing is part of the general workload of a pharmacist, correct?

A. Yes.
Q. And there's a lot of other duties that are involved in the general workload of a pharmacist, correct?
A. Yes.
Q. So these responses about general workload and patient safety in the pharmacy setting inform context of opioids and all those other duties that a pharmacist has, right?
A. Yes.
Q. And that's what you're saying here; you're not saying that any one of these answers is specific to conditions in dispensing opioids, are you?
A. I'm not saying that, but it's part and parcel of the stress, pressure and safety component of pharmacists and their need to do that in a practice setting.
Q. So one of the things -- sorry. Go ahead.
A. One of the tables in my report lists out, not inclusive, but some of the items that pharmacists need to consider when they are in a practice environment. That

happens to be Table 1. And you go through that list. These are not separate, mutually exclusive items. These are items that work in concert to make it even more difficult based upon what you see as what the expectations are in each and every one of these. So it's not additive. It's synergistic. One plus one doesn't equal two. One plus one might equal ten as far as stress, strain, stress, et cetera.

Q. So one of the things Dr. Selzer, I think, says in her report is that she can't extrapolate from the questions and the results information specific to opioid dispensing, but are you disagreeing with her on that point and you're saying you can do that?

A. I'm disagreeing with Dr. Selzer's assessment because, first of all, she might have incredible expertise as a pollster. She has zero expertise in analyzing what goes on within a pharmacy practice, what pharmacists have to deal with. She did not go into a pharmacy, spend time to see what the environment was or analyze what the environment was. To her that was

inconsequential. And, in my estimation, that's absolutely crucial when you consider what these results are.

Q. But you don't think anyone just looking at these survey results can interpret them, do you; it's got to be somebody who knows about pharmacy conditions and dispensing regulations and opioid abuse and diversion?

A. I disagree with that, and I disagree with it based upon the verbal responses that you see. If you're a member of the general public and you see a woman in a practice setting that's pregnant telling someone that she can't go to the bathroom, that she can't take a lunch break, that she might be a salaried employee but she has to work 60 hours a week, I don't care what your discipline is -- I don't care what your profession or lack of profession is -- that resonates with me if I read that.

Q. You've mentioned that a couple of times and I understand you're upset by that comment. Is that comment anecdotal or is it representative of the response population?

A. In my mind it doesn't make any

difference if it's anecdotal or representative. I'm looking at this from a qualitative standpoint that this individual had the courage to walk away from an environment because she didn't feel safe doing it. That's all I need to see. I don't need to know whether this is representative or whatever. I just need to look at it at face value from a quality standpoint. That's disturbing to me. It would be disturbing to me if a general public person read this and analyzed it.

Q. If you could turn to page 14 of your report. The last sentence in that only full paragraph in the middle of the page starts out "For the Board."

Do you see that?

A. Yes.

Q. And you say, "For the board, the question is not if pharmacies play a role in opioid abuse and diversion but why they play a role and whether enhanced regulations and changes in corporate conduct may reduce the risk of abuse and diversion." What do you mean by this?

A. Okay. I think that pharmacists play a role in proper or improper opioid abuse and diversion, and regulations that impact patient safety would enhance their ability to do things in a proper and professional manner that they need to.

Q. Are you saying that this is the question that the Ohio Board of Pharmacy sought to answer with their surveys?

A. No. It was just looking at what the workplace safety was and how that impacts this general specific component of workplace safety.

Q. So you're not saying that they were trying to answer these specific questions about opioids that you put in this sentence, right?

MR. ELSNER: Objection.

A. In order to put this sentence in proper context, I think you have to read the entire paragraph and look at "The Ohio Board also determined that 40 percent of those who overdosed had a prescription for a benzodiazepine within 90 days of death. 30 percent of all unintentional overdose deaths

involved both an opioid and benzodiazepine prescription." All right. So that background puts in context what it is that you're trying to just isolate into one sentence. You have to look at the entire context of that paragraph.

Q. And I'm not trying to be tricky here by isolating and taking something out of context, so, you know, I appreciate your correction there. I'm trying to figure out how this relates to the surveys.

A. The surveys were to get pharmacists' perception of workload environments, and their stresses, the strains that they expressed both through their Likert responses as well as the verbal responses indicated that they were incredibly stressed and overloaded; and if you consider those facts and then look at opioids and opioid dispensing, improper dispensing, it has a dramatic direct impact on how safe that process is.

Q. You are making that connection based on prior findings of the Board of Pharmacy, is that right, or are you making

that connection based on explicit connections that the Board of Pharmacy made with the survey?

MR. ELSNER: Objection.

A. I'm just basing my assessment on the entire impact of what this paragraph is indicating.

Q. Okay. You cite in your opinion the CSA provision on corresponding responsibility. What is corresponding responsibility of a pharmacist?

A. If you look at the Controlled Substances Act, that stipulated that drugs were classified in Class I through Class V as far as dangerous narcotics types of analgesics and other types of products, okay. And so pharmacists have responsibilities for making sure that only those prescriptions that can be dispensed are dispensed, quantities are limited in some of these cases, you have to get a new prescription for each and every one of a controlled substance II classification. So that's what I'm referring to as added responsibilities. So it's not only a state board of pharmacy stipulation but it's a Drug

Enforcement Administration stipulation. It's a federal statute that comes into play, too. So you've got two overlapping regulatory agencies, the Board of Pharmacy and the Drug Enforcement Administration, impacting what pharmacists have to do when they dispense these medications.

Q. And what do pharmacists have to do in order to fulfill their corresponding responsibility?

A. They have to follow to the letter of the law which drugs can be dispensed, how often they can be dispensed, how many times a prescription can be refilled. If it's a new prescription for a Schedule II product, it has to be a new prescription each and every time that product is filled. There are limits on how many tablets, capsules, milliliters of liquid that can be dispensed in some of these cases. How these products are ordered from a wholesaler or from a manufacturer are stipulated as far as specific forms and documents that have to be provided. So there's documentation, there's recording after the fact of what was done and why it was done.

This all has to be done by the pharmacist.

And in the state of Ohio there's the additional assessment through their automated online system, the OARRS, that you have to document each and every prescription for an opioid in that system.

Q. Have you ever heard of the term "red flag"?

A. Yes, I have.

Q. What is that?

A. Red flag is an indicator to a pharmacist in a practice environment that they need to look at several different things pertaining to the dispensing of a particular product. And let me elaborate.

If you're looking, for example, at the paragraph that we were just talking about, if an opioid is prescribed along with a benzodiazepine, that's a red flag. Why is that a red flag? It's because the interaction of those two drugs is not additive but it's synergistic. The impact of the drug with the addition of another drug is much more intense than either one of those drugs taken by themselves. So that's one of the items in a

red flag.

The second would be is the patient traveling a long distance either to the prescriber to get the prescription or to the pharmacy to get the prescription dispensed. So it's the types of drugs, it's the distance that the individual travels, how frequently are they refilling or filling these prescriptions. That's another part of the red flag process.

And, finally, are they simply paying cash as opposed to using a credit card or charging the item to an account.

So these items, again, are part of what's called red flags, and these are Drug Enforcement Administration red flags, they're National Association of Boards of Pharmacy red flags, and, in some cases, state red flag components regarding the practice and dispensing of these products.

Q. These red flags that you named, are these the only red flags or are they examples of red flags?

MR. ELSNER: Objection.

Go ahead.

A. They're simply examples.
Q. And if a red flag is apparent in an opioid or controlled substance prescription, what duty does the pharmacist have?
A. The pharmacist can refuse to fill it. And in my practice in the past I have done that. I have refused to fill prescriptions and I have contacted other pharmacies in the area where I was practicing to indicate that X and such person may be trying to do X and such receipt of a prescription.
Q. Now, when a red flag is present, does a pharmacist have to refuse to fill the prescription?
A. With due diligence and assessment, the pharmacist shouldn't fill the prescription, no.
Q. Will something be a red flag in one instance and perhaps not in another, like the example of traveling long distance?
MR. ELSNER: Objection.
A. There might be an instance where somebody is visiting a relative 200 miles away

from home and they're in a situation where they need to have a medication filled, so that red flag wouldn't have the prominence of somebody that's just doing this to obtain the drug, period.

Q. And in that instance should the pharmacist dispense the opioid medication?

A. With due diligence and analyzing the situation thoroughly, talking with the patient, assessing why they are getting the prescription, where they're getting the prescription, that can eliminate the importance of that red flag.

Q. And do pharmacists have to use their independent judgment in evaluating what is a red flag and how to handle it?

A. Pharmacists have the ability to be able to do that. For example, in the state of Ohio any pharmacist in any practice environment can refuse to fill that type of a prescription if they feel that it shouldn't be filled.

Q. Do you agree that pharmacists have to employ clinical judgment and individualized patient-centered decision-making in dispensing

opioids?

MR. ARNOLD: Objection. It's beyond the scope.

A. Pharmacists use their clinical judgment each and every minute of each and ever hour of the practice time that they're in their role as a pharmacist.

Q. Is knowledge of pharmacy regulations that you've talked about in your report essential to being able to interpret the Ohio Board of Pharmacy surveys?

MR. ELSNER: Objection.

A. They're related. They are intertwined.

Q. And, in your opinion, does someone with survey expertise also need expertise in the survey subject matter to be able to interpret the results of the survey?

A. My assessment is if somebody is evaluating a survey as an external reviewer, if they don't know specific components of that particular survey design and methodology, they need to find out what that is through their own research before they make any type of a judgment.

Q. What do you mean by design and methodology here when you say that?

A. Okay. In my estimation, Dr. Selzer did not look completely at why this Ohio Board of Pharmacy was being done. She didn't analyze the conduct of what it was being done for. She didn't understand anything about the practice of pharmacy. She didn't go into a pharmacy to see how it was practicing in a specific location. In order to make an evaluation -- this is my estimation. In order to make an evaluation of a survey in that particular environment, you need to find out all that you can to get more educated on what the survey was designed to do, how the items were collected, and how the results were going to be used.

Q. And her reliance on the stated purpose of the Board of Pharmacy surveys was insufficient in your opinion?

MR. ELSNER: Objection.

A. It was insufficient because she didn't know anything about the practice of pharmacy.

Q. And is knowledge of all the

regulations and laws pertaining to dispensing and pharmacy practice necessary to be able to interpret the survey results or just some of the laws and regulations?

MR. ELSNER: Objection.

A. I think it's in some cases totally irrelevant. If you consider the fact that workplace conditions are going to impact each of the items that were in Table 1 that we referenced earlier in my report, that's what's important.

Q. Can you explain that to me?

A. Okay. Can we go to that particular table in my report?

Q. Sure.

A. Table 1. It's on page 32, okay. And if you go down each of these items that are listed, these are not some that you can say, well, I'm going to do the first five but I don't need to worry about the next five. When you're in a practice environment, when I've been in a practice environment, each and every one of these impacts what I do and how I do it. They're vitally important to be able to practice in a safe environment.

And, again, let me point out this is not to make me feel better about what I'm doing. That's not my purpose as a pharmacist. My purpose as a pharmacist is to provide safe and appropriate care for the most important person in this process. It's not me. It's not the physician. It's not the supervisor that I report to. It's not my general manager. It is the patient. And if you don't have these in play, you're not going to be able to help the most important person in this equation, and that's the patient that you're supposed to be providing safe, efficient and appropriate care for.

Q. Are you saying that the results of this survey speak to each of those categories in that table as to whether or not the respondents had sufficient time or ability to conduct their required tasks?

A. To answer that question, I'm going to look at what the responses that were Likert scale items showed. I'm looking at some of the demographic items that were indicated, whether your practice site was in an institution, a chain or food market-based

pharmacy, how many hours a week did you work, how long have you worked in that environment. Okay. You take those factors and you combine them with the verbal responses and you look at what's required in Table 1 -- this is not an all-inclusive listing. This is just some that I wrote down, all right. But you can't do your practice as a pharmacist if these items are not appropriately available to be practiced in a safe and appropriate environment for a pharmacist.

Q. So, in your opinion, the survey results spoke to each of these tasks that you've written down here in Table 1?

MR. ELSNER: Objection.

A. If you look at the totality of the surveys and the survey responses, I'm reiterating that both the verbal responses that were written, combined with the responses that were tabulated in the Likert scale component and the work environment, indicate that these have a major impact on pharmacy practice in the state of Ohio regardless of where you practice.

Q. So from your review of those

demographics and survey results and written results and Likert scale, are you able to say, for instance, that the pharmacists who responded were unable to monitor, inventory and place orders to avoid shortages?

A. I would respectfully request that you just don't look at one of these items. They're not mutually exclusive items. They are additive. You can't look at one without looking at the other 15. You have to look at them in total.

Q. Okay. So same question. Can you look at the survey results, the comments, the demographics, the Likert scale results and make the determination that pharmacists are saying they cannot do any of the 15 things that you put in Table 1?

MR. ELSNER: Objection.

A. To me it's not relevant whether they can do one or two or three of these. Some of these come into play each and every time they dispense one medication. Some of them have applicability to only certain medications.

If you look at, for example, the

last four items, ability to focus, ability to take breaks, 12-hour plus shifts, no requirement for working unpaid hours, those impact every single thing that you do as a practicing pharmacist.

If you go back and look at specific ones, like opioids, and the adequate time to accurately verify prescriptions in the second series of rows, that's pertinent to opioid dispensing, okay, but you can't appropriately take care of that one that I just talked about if you don't have the ability to focus, you can't take a break, if you can't go to the bathroom for crying out loud, and you work 12-hour shifts. That's absolutely unbelievable that somebody works that many hours. I don't care how bright you are. I don't care how efficient you are. The stress, strain and mental toll that that has on people is incalculable.

Q. Can you go to page 14 of your opinion? In the last sentence on that page, leading into page 15, you talk about pharmacists fulfilling controlled substance obligations, and you state that "to suggest

that patient safety does not encompass filling dangerous opioid prescriptions ignores why and how pharmacists protect patients."

Do you see that?

A. Yes.

Q. When you read Dr. Selzer's opinion -- report, is she suggesting in her report that patient safety does not encompass filling certain prescriptions?

MR. ELSNER: Objection.

A. That's not what she said.

Q. Okay. Isn't she just saying that you can't take the results of the survey and draw conclusions about opioid dispensing from them? That's her opinion, correct?

MR. ELSNER: Objection.

A. I think her opinions are invalid because she doesn't have any idea what it is that she was assessing. She didn't have any understanding what a pharmacist was. She didn't have any understanding what pharmacists do. She hadn't been in a pharmacy to see what their workplace environment is. And I don't think you can evaluate something unless you have a thorough understanding of what it is

you're supposed to be evaluating. And, again, I'm not trying to denigrate her ability as a pollster. She's nationally recognized, isn't she? But as to her ability, background to analyze a pharmacy or pharmacy component, she doesn't have the backroom -- background -- excuse me -- experience or she didn't take the time to look at what she was supposed to look at in order to assess what was going on in this survey.

Q. But your opinion is that you can draw conclusions about opioid dispensing from these questions and results, right?

A. Yes, I can.

Q. Are you able to tell from the survey that pharmacists are receiving prescriptions for opioids that are not legitimate?

MR. ELSNER: Objection.

A. I can't make that assessment unless I look at each and every prescription that was presented for proper filling. What can I -- what I can look at is the general environment that these pharmacists were expected to practice in, not being able to

take a break, not being able to go to the bathroom for crying out loud, you don't have time to eat. What if someone has diabetes and they can't take a break or they can't eat? How does that impact their metabolic state? So those factors impinge directly on how they can do what they're supposed to do in a safe and effective environment, including the dispensing of opioid and opioid prescriptions.

Q. Are you able to tell from this survey that pharmacists are filling opioid prescriptions without conducting due diligence?

A. What I'm saying is based upon the responses of pharmacists, they feel they don't have time to do what they need to do to take care of their patients that they're responsible for taking care of, and that would include opioid dispensing and opioid prescriptions for patients. They simply don't have the time to do lots of things, including due diligence of monitoring opioids and opioid prescriptions.

Q. But you can take the results of this survey and state that the pharmacists who

responded are filling opioid prescriptions without conducting due diligence?

MR. ELSNER: Objection.

A. I can't make that statement and that's not the purpose of my evaluation of the surveys.

Q. Are you able to tell from this survey that pharmacists are dispensing opioid prescriptions that are not for a legitimate medical purpose?

MR. ELSNER: Objection.

A. I can't specifically state that, but what I can see is there's a work environment that makes lots of things unsafe, including dispensing opioid prescriptions. It also includes monitoring patients, counseling patients, preparing vaccinations for administration, administering the vaccinations, monitoring the patient after they get a vaccination. It's a combination of several things that can potentially lead to problems with all kinds of medications that are being dispensed.

Q. Not just opioid dispensing but everything that falls under the duties of a

pharmacist are impacted, correct?

A. That's correct.

And I make that assessment based upon the Likert responses as well as the verbal responses that were presented.

Q. If you were designing a survey to pharmacists to find out about conditions specific to dispensing opioid medications, would you use these questions or would you use questions that specifically talk about opioids?

A. I would look at specific questions that were focused on opioids and opioid dispensing. If that was the purpose of the study, I would, first of all, look at what's been done before, why am I doing the study, what questions am I going to ask, have these types of questions been asked by other researchers. If they have, can I get their approval and permission to reuse those questions in a survey that I want to do? And then focus my responses to the data collected based upon what it is that I was intending to do.

Q. You agree with me --

A. That's how I would design that study.

Q. You agree with me that that was not the purpose of the Ohio Board of Pharmacy surveys, right?

MR. ELSNER: Objection.

A. That was not the purpose of the Ohio Board of Pharmacy surveys.

Q. Can you look at page 15, footnote 61? And this footnote is in reference to Dr. Selzer's report where she ran some search terms in the survey results and found relatively few mentions of opioids and some related terms, and you note in that footnote that she did not run search terms for OARRS or PDMP, which also implicate controlled substances, correct?

A. Yes.

Q. Did you run these search terms in the results of the pharmacy surveys?

A. I did, but I can't tell you what those factors were because I didn't include it in my report.

Q. Do you recall whether or not there were significant mentions of both of those?

A. Again, Ms. Wohl, it wouldn't be a quantitative assessment on my part. I would look from a qualitative standpoint of what each individual said in response to this component and then see what perhaps an issue might be that needs to be addressed. It wouldn't matter how many times it was indicated. If it was indicated once, that's all I would need to see from a qualitative review standpoint.

Q. The significance of the terms that are related to opioids that she ran, and also OARRS and PDMP, is that if they appeared at all, that is of significance in terms of dispensing opioids in your opinion; is that right?

MR. ELSNER: Objection.

A. What would be important to me would be considering those specific qualitative components in addition to the other things that were indicated in responses, either the Likert scale items, the demographic items that were collected or the written responses that were provided.

Q. Let me ask one more question or

two more questions before we take a lunch break here.

If you could turn to page 26. The paragraph that starts out "Like the Ohio survey." Here you're talking about the Missouri survey, and your second sentence there says, "Yet, some pharmacists recognized that the workload pressures they face impacted their ability to dispense controlled substance safely." Are you talking about the responses in the Missouri survey in that sentence?

MR. ELSNER: Objection.

A. Both the surveys.

Q. Okay. You didn't cite anything there. Can you point me to the specific pharmacist responses that you're talking about?

A. Again, it is in reference to general assessment of workplace safety, the pressures that they're under, the stressors that they're under, the staffing that they have, the inappropriate and insufficient training of the staff that they have. That is part of the workload pressure that has no doubt impact upon dispensing any product

safely, including opioids or controlled substances.

Q. So you're not saying here the pharmacists specifically recognized pressures impacting dispensing controlled substances, they just generally recognize workload pressures that impact everything about their pharmacy practice?

A. What you just stated most definitely impacts everything that they do from a practice standpoint, including the proper monitoring and dispensing of controlled substances.

Q. So, again, just to understand this sentence, you're not stating here in this sentence that respondents recognize workload pressures specific to their ability to dispense controlled substances safely, are you?

MR. ELSNER: Objection.

A. I'm talking about their ability to dispense anything, but when we're talking about controlled substances, that has an added weight to it.

Q. Okay. So you put controlled

substances in there as an example, not as what they're specifically recognizing?

A. It's one example, but it's a really important example because of what can happen if they're not appropriately monitored.

Q. Okay. Just wanted to make sure I understood that.

MS. WOHL: Can we go off the record?

THE VIDEOGRAPHER: Off the record, 12:07.

(Luncheon recess taken.)

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AFTERNOON SESSION

THE VIDEOGRAPHER: On the record, 12:46.

CONTINUED EXAMINATION OF

JACK E. FINCHAM, Ph.D.

BY MS. WOHL:

Q. Welcome back, Dr. Fincham.

A. Thank you.

Q. I would like to start off our post-lunch session with going back to the purpose of the survey, which I think we've said a few times, which is to assess the general workload and work conditions at Ohio pharmacies. Is there anything about that I didn't get right?

A. No. You did.

Q. Now, you mentioned a couple of times this morning the comment about the one pregnant woman working 40 plus hours, and I understand that is upsetting, but can you say that that is a general working condition at pharmacies in Ohio?

MR. ELSNER: Objection.

A. That was specific to that

individual's complaints, but, Ms. Wohl, if you would look at other verbal comments talking about the lack of breaks as being a real important factor in their work satisfaction, if you look at how they -- many people, including some Kroger pharmacists, talked about the negativity of metrics; having to have certain constraints placed upon how they can practice in a safe and effective environment; the number of vaccines that they had to give; the number of MTMs, medication therapy management consultation, that they have to provide. In some cases in my mind that just doesn't make sense, to put a time limit. When I've done MTMs, when I've done medication therapy management evaluation, it takes me at least 30 minutes per patient, so if you have that as a determining metric, it's going to compound things.

So it wasn't just that one individual talking about her break situation. There were lots of other comments from many other pharmacists, and some of the pharmacists didn't say that they worked at Kroger but no doubt there were others that didn't list their

practice site that were Kroger pharmacists that expressed those concerns.

Q. Okay. So is it your opinion, sitting here today, that it is a general working condition at Ohio pharmacies that pharmacists are not provided with adequate breaks?

MR. ELSNER: Objection.

A. It depends upon the particular practice environment. And if we look at the wide range of respondents to both of these surveys, there were pharmacists that practiced in an institutional setting that didn't have that concern, there were pharmacists in an independent practice setting that didn't have those concerns. So there were some situations where that was presented as being a real issue and a dramatic influence on their ability to practice, but it would depend upon the particular focal point of what you're examining, and that came through in the different demographic components of practice sites that came through in the study.

Q. Is it a general condition at large chain grocer pharmacies that pharmacists do

not have adequate breaks in Ohio?

A. Based upon what the survey results were, I would answer that question yes, it's a major concern. It's not just grocery store pharmacies. It's major chain pharmacies total.

Q. If we could just be clear. I didn't ask major concern. I'm asking if it's a general condition.

MR. ELSNER: Objection.

A. And I guess I'm saying it's a major concern because if it's a general condition, to me that's majorly concerning.

Q. So then the answer is yes, it is -- you can say it is a general condition at large chain grocers that pharmacists in Ohio do not have enough breaks, time for breaks?

MR. ELSNER: Objection.

A. I can't make that -- that statement.

Q. So you find it concerning but you can't say it is a general condition?

A. Okay. What I'm trying to say, Ms. Wohl, is if you look at this from a quantitative standpoint, you're looking at a

number X or a number Y; if you look at it from a qualitative standpoint, if it impacts 10 percent or 20 percent of large chain store grocery pharmacies, that's a significant impact in my estimation.

Q. Is it a general condition?

MR. ELSNER: Objection.

A. I don't know if it's a general condition or not, but it's a concerning factor to me.

Q. Okay. You have criticized Dr. Selzer as being unqualified to offer analysis of the Ohio Board of Pharmacy surveys. My question to you is what qualifications does somebody need to have to form an opinion on these surveys or analyze the results and methodology?

A. If they don't have a particular expertise in a defined area, such as pharmacy, before they evaluate a survey to assess pharmacists and workplace safety, they need to do what they can do to try to get familiar what the environment is, what is the major concerns that might be apparent when you consider the practice environment. So you

don't have to be a pharmacist to be evaluating a particular survey. You have to have someone that at least has an appreciation of what pharmacy is and what the impacts might be on patient safety. And so if you look at -- if she would have done research based upon what were the other studies that have been done, what did they show, what did they examine, what kinds of questions did they ask, why did they ask those questions, that gets at the point of why this particular study was done in the first place. So I examined what they wanted to look at, how they would ask the questions and what they were going to do with the results.

Q. I heard a couple of different answers to my question so I want to pinpoint what it is I'm looking for here. The qualifications that you believe somebody needs to have to form an opinion on these surveys, analyze the results, the methodology, I heard you say an expertise in pharmacies and then I heard you say an appreciation of what pharmacy is and patient safety.

A. I don't think you have to have an

expertise in pharmacy to do the evaluation. I think you have to have an understanding of what the practice environment is and what factors may impinge upon the safe practice in that environment. You don't have to be a pharmacist, but you have to have perhaps a perception of what the concerns are based upon what other studies have shown, what other studies have examined, those types of things.

Q. Will you give me some specifics about the qualification that you stated of an understanding of practicing pharmacy and the factors involved? What would somebody need to do to become an expert or to have the qualifications that we're talking about here?

A. What is the practice environment that you're examining? What are the responsibilities within that practice environment? So if you don't know much about institutional pharmacy practice, can you shadow a pharmacist in that environment to see what it is he or she does? The same thing in a chain setting or a food market-based pharmacy. Just spend some time to try to get an appreciation of what factors are impacting

how that individual does their due diligent responsibility to make sure the patients are safe.

Q. And, in your opinion, to be qualified to draw conclusions on these surveys, you would have to either be a pharmacist or shadow a pharmacist; is that fair?

MR. ELSNER: Objection.

A. That's not what I'm saying at all. I'm simply saying if you shadow a pharmacist, you might see what it is that they are doing and what they need to do. You don't have to be an expert on examining what it is that they do. You just have to have an appreciation of what's involved and what that means.

Q. Okay.

A. Let me give you an example. What about metrics? So when you perhaps go into a food market-based pharmacy and see that they have to have so many vaccinations within a defined period of time, ask them what they're supposed to be doing in order to get approval from their management.

Q. What I'm trying to understand is

the qualifications that you believe are required to form an opinion on these.

A. I would state it as qualifications more than just simply an understanding of what it is that's being examined.

Q. So when you say Dr. Selzer is unqualified to offer opinions on this survey, what you're saying is she doesn't have the requisite understanding of the subject matter?

A. That's correct.

Q. And specifically the pharmacy subject matter, not the survey subject matter, right?

MR. ELSNER: Objection.

A. It's the pharmacy subject matter, which was the purpose of doing the survey in the first place.

Q. So when you are forming opinions on the survey, are you using any of your expertise related to surveys or are you just relying on your pharmacy expertise?

A. I'm using all of the above. I'm looking at what types of surveys I'm familiar with, what I've done in the past, how I've looked at others when they have viewed their

research components. So that comes into play. But an additional factor is I've practiced in environments that have been stressful where there have been lots of impacts of what I do and how I do it. So that, in effect, supplements my questionnaire and survey research methodology with having some understanding of exactly what's going on in a particular pharmacy environment.

Q. Of all the prior surveys that you have experience in designing or analyzing, how many of them have been field studies?

MR. ELSNER: Objection.

A. If you would look at the 70 studies that I talked about, the -- that have specific full sight on questionnaire and survey research, probably 15 of those 70 were field-type studies. And to elaborate, those field-type studies were utilizing a service that was available at the University of Georgia called the Georgia poll. And the Georgia poll I used at least 15 times to assess, in a field framework, what the lay of the land might be.

For example, I looked at physician

assistants; I looked at individual's choice of using meta clinics, when those first came into play as an alternative to going to a physician's office or an emergency room. So the Georgia poll was focused on field-type studies that weren't defined numbers and percentages of people but were individuals that were utilized in numerous instances by numerous researchers at the University of Georgia through what was called the Georgia poll.

Q. Would you consider yourself unqualified to analyze survey results and methodology that were in a subject outside of pharmacy and medicine?

MR. ELSNER: Objection.

A. I would disagree with that because I've examined other types of environments that weren't specific for pharmacy per se or medicine per se.

To give an example or two, I've looked at managed care organizations, and so I'm not an expert on the ins and outs of everything about managed care, but I used my survey research analytical methodology to look

at how I could examine several topics within a managed care environment. And I did the same thing from a public health point of view in public health studies that I did. So they're not disparate as far as A is never equal to B, but public health is certainly a part of the healthcare system, but I used expertise and knowledge that I gained over the years through research -- and I've, fortunately, had the ability to do other types of research endeavors -- to look at things that I don't necessarily have everything that I need to know about before I go into it. I study it very intently before I even attempt to do it.

Q. Would you be able to look at a survey that didn't have anything to do with your pharmacy, medical, healthcare knowledge and be able to offer an opinion on the methodology and the design of that survey?

A. I feel that I could, yes. And if I could give a rationale for doing that. One of the major references that I've used for 40 years is a series of books, articles and treatises that have been written by a man named Donald Dillman. Donald Dillman is an

esteemed professor of sociology at the University of -- excuse me, at Washington State, and I've cited him in the report that I provided. But Dr. Dillman's field of study is sociology, okay, but his techniques for analyzing a potential survey focus is what I've used in the course of my studies. So I don't have to be an expert in everything, but I do have to have an understanding and appreciation of what it is I'm trying to assess and whether I have the ability to do that before I even start to assess it.

Q. Do you think that the COVID pandemic put more pressure on pharmacists and made their jobs more difficult?

A. I think as a general rule, it made everybody's job more difficult, but it impacted healthcare professionals to a significant degree, yes.

Q. Is it possible that those additional pressures were in the minds of pharmacists when they responded to this Ohio Board of Pharmacy survey?

A. I think, again, you have to look in total appreciation of what pharmacists have

to deal with, not only the COVID component with vaccinations, but the additional vaccinations that they provide, and most pharmacies now provide 15 or 20 different types of vaccinations. So COVID was crucial, it was important, and it added to the pressure, but those pressures were in existence long before COVID came into play, and that's been documented in the literature going back to the 1960s.

Q. Is it possible to know whether the respondents to the survey were thinking about COVID or opioid dispensing when they answered the questions about patient safety and working conditions?

MR. ELSNER: Objection.

A. Well, I think they considered all of the factors when they answered these questions.

Q. And some of them specifically commented about COVID and the pandemic, right?

A. Yes, they did.

Q. So we know that some pharmacists were thinking specifically about COVID when they took the survey, right?

A. I think you would have to have that in the back of your mind. Some pharmacists responded very positively about their work environment. It wasn't all a negative compilation of problems. There were people that were very satisfied with their work environment and had a very good understanding of what patient safety meant where it is that they practiced. Again, you can't overgeneralize because there are a wide range of responses that were provided.

Q. You can't overgeneralize the responses and generalize them to the working conditions at all Ohio pharmacies, right?

MR. ELSNER: Objection.

A. That wasn't the intent or purpose of the survey. The survey wasn't to do any kind of generalization. It was just to do an assessment of what the factors are from the perception of a pharmacist. And I think one of the real positive components of this survey and this whole methodology was it was conducted by the Ohio Board of Pharmacy -- excuse me. And the Ohio Board of Pharmacy has oversight over each and every pharmacist and

pharmacy that was represented in the study sample, so that gives a lot of validity to pharmacists viewing how they were going to respond. They were hoping that what they were going to say might make a difference in the outcomes of how they practice their profession.

Q. Is that an assumption that you're making or is that part of a scientific method in analyzing surveys?

A. It's a funded scientific method. You're looking at who is doing the survey, why does that individual or individuals or organization that is doing the survey have some credibility with who they're asking the questions of, does it gives some validity and reliability to the results that you find, and I think in this case it certainly does.

Q. Are you relying on any evidence that suggests that a regulatory body issuing a survey is going to garner more valid or truthful responses from the survey participants than another organization would?

A. I think that if you look at the studies that have been done that have been

published in the literature, those that come from that type of organization have an enhanced validity associated with them.

Q. You say that Dr. Selzer is not a pharmacist and doesn't have pharmacy expertise, but you agree that she was not asked to provide an opinion on the operation of pharmacies, right?

MR. ELSNER: Objection.

A. But if she was to evaluate a survey that was done to look at pharmacy working conditions, she didn't have to be a pharmacist, she didn't have to have pharmacy expertise, but she should have had some type of an appreciation of what the workplace environment was for the different type pharmacists that were going to be surveyed in this particular series of surveys.

Q. Did you get from her report that her opinion was that opioid dispensing is not part of the practice of pharmacy? Does she say that somewhere?

MR. ELSNER: Objection.

A. I don't believe she said that in her report, no.

Q. And she wasn't asked to look at the responses and decide whether or not she thought they were concerning, did she -- was she?

MR. ELSNER: Objection.

A. She should have looked at who was being asked these questions, where they practice, what the different types of practice environments were. And it wouldn't take somebody a month to do this, okay. It would have taken a very defined short period of time to at least get an assessment of what's the metric, how does the metric impact what it is that you do, what does the Ohio Controlled Substance reporting system -- what does that do, why is that in place. You wouldn't have to spend a month doing it. You should at least have an appreciation of what the questions were being asked for and what the respondents might be responding as a basis for their responses.

Q. You just told me what you think she should have done, but what I asked you is she wasn't asked to look at the responses and decide whether or not she thought they were

concerning, was she?

MR. ELSNER: Objection.

A. She was asked to evaluate the survey, okay, and if she was asked to evaluate the survey, she should have taken the initiative to find out what it is that was being sought in the survey, and she did not do that.

Q. She wasn't asked to form any opinions about what metrics are and what it means that pharmacists said metrics impact patient safety, was she?

MR. ELSNER: Objection.

A. She wasn't asked that, but when she read the responses that dealt with metrics, why didn't she look at what a metric is, why didn't she ask pharmacists how metrics impact what they do and how they do it? She didn't take any effort to find out what that concept meant, period.

Q. And that would be part of a methodology in understanding your survey design?

MR. ELSNER: Objection.

A. In my estimation, that's what she

should have done if she was going to evaluate the worth, benefit and efficacy of a survey that she was supposed to evaluate on its net worth.

Q. Was she evaluating it from a pharmaceutical perspective or was she looking at it from purely a survey expertise and a survey design?

MR. ELSNER: Objection.

A. She was looking at this as a pollster. She didn't have the expertise in survey research to do what she was asked to do. That doesn't mean that she isn't an absolute authority on political polling. That wasn't what she was asked to do. She was asked to do something that she didn't have any expertise in. Before she responded that she was going to do it or if she did do it, she should have at least found out what are the issues that might be impacting what it is this survey is seeking to find.

Q. Page 19 of your report -- if you can go there -- you state that, "Where difficult questions exist over whether to dispense a controlled substance, corporate

pharmacy policies and expectations in large chains conflict with pharmacists' corresponding responsibilities and due diligence duties"; is that right?

MR. ELSNER: Can you just tell us where you're at? Sorry.

MS. WOHL: Yeah. One second.

In the middle of that first full paragraph, the question starts "Where difficult questions exist."

MR. ELSNER: Thank you.

Q. And you bring in pharmacy policies and expectations.

Do you see that?

A. Yes, I do.

Q. What corporate policies are you talking about here?

A. Talking about metrics. How quickly do you have to dispense a prescription within tenths of a second, how many prescriptions do you have to dispense in a particular period of time, and are you rewarded or not rewarded based upon how well you meet these assigned capabilities that are put on you by a national chain such as Kroger,

whose responsibilities and requirements don't change from Ohio to Pennsylvania. They're exactly the same from state to state to state. So those expectations for metrics, for making sure that you have some people out the door within a defined period of time, that directly conflicts with pharmacists' due diligence capabilities.

And it got to the point in some of the responses from the Kroger pharmacists that they had to alter their data to make it appear like they were doing better than they were supposed to be doing. There was pressure at the corporate level to do that. That is unbelievably unethical to put that kind of pressure on a pharmacist, because if something happens and that is found out, who's going to be nailed? It's going to be the pharmacist that's going to be nailed. They did this wrong. They did that wrong. If somebody is telling them they have to meet this quota, they have to have this level of -- of satisfaction, if they alter that, that's going to impact everything that they do in the future. They can't even practice their

profession if they're -- if they're found out to have done that.

So those are the kinds of things that I'm referring to here, to the large chain expectations. It's absolutely unbelievable that you would expect somebody to get rid of a patient, so to speak, within a defined period of time and deal with your next patient. What if somebody in your family is 85 years of age and they take ten medications and they get a new prescription filled? Are you supposed to get them out the door in two minutes without talking to them, listening to them, asking them how you can help them? That's what I'm talking about when I mentioned that in this paragraph.

Q. I understand you're upset by these comments. Going back to the purpose of the survey, can you tell by those Kroger-specific comments that that is a general working condition in Ohio?

A. If you're looking at me to quantify it and tell you how many did this, to me that's irrelevant, if there's one pharmacist, if there's two pharmacists, if

there's ten pharmacists. And it wasn't just Kroger pharmacists that said this. It was -- all kinds of other individuals talked about the impediments of metrics, whether you're with Walgreens or CVS, Rite Aid, you name it. It's deleterious. It doesn't matter how many there were. What matters to me is that there were any at all because that's going to impact how you're going to take care of the most important person in all this, and that's the patient.

Q. Which corporate policies did you review when you came to this conclusion in that sentence about corporate pharmacy policies?

A. I looked at some of the Kroger requirements to get perhaps rated better, what you had to do to get rated better. You had to make visits to physicians. So many had to be done. You had to have so many filled within a defined period of time. You had to give so many vaccinations. This is counterproductive to taking care of patients that need to be taken care of on an individual basis.

Q. Did you ask for any additional

policies to look at?

A. Those are all I needed to see, Ms. Wohl, to see that there was something wrong in the -- in the water.

Q. Is there anything --

A. I didn't need to see 15 other things. That's all I needed to see was this worksheet that listed how you're supposed to get evaluated better, and the fact that if you didn't do it, you're supposed to make up the data in Kroger to look better.

Q. Do you know the date of the policy that you reviewed?

A. I don't know the specific date. I'd have to -- I'd have to go through the report to find it.

Q. Do you know whether that policy was in place at the time pharmacists responded to this survey?

A. I don't know.

Q. Would that make a difference in your estimation of these corporate policies?

A. It would make no difference whatsoever, because if the policy was in place two years ago, five years ago, ten years ago,

the pressure on that pharmacist as they've been in that same environment is still going to be there; how am I being evaluated, is this policy going to change, is it going to alter from year to year or month to month. That's in play, period, regardless of the time. That's important to me.

Q. So I understand that you have opinions on Kroger's policies with respect to metrics based on the document that reviewed, the worksheet you're referring to; is that right?

MR. ELSNER: Objection.

A. It's based on that as well as the verbal comments, the written comments where people talk about how deleterious metrics were to their ability to practice in a safe environment, the added pressure, the added stress, the fact that they couldn't meet these metrics, they couldn't take care of patients. So it was a double negative component.

Q. And I take it from your testimony that your opinion is that you agree with those comments made by the couple of Kroger pharmacists about metrics, with respect to the

metrics policies; is that right?

A. I certainly agree with what they said and how they said it, yes. They had absolutely no reason to lie. They were reporting this to somebody that oversees their ability to practice their profession. Why would they lie about it? They were trying to get help. They were trying to get things done to make things better. Why would they lie about that? Why would so many people lie about that?

Q. I'm not asking whether or not you thought they were truthful. I'm asking what your opinion of Kroger's policies are.

MR. ELSNER: Objection.

A. I think the policies are despicable. They have absolutely no benefit for patients at all.

Q. And is there anything else that you would need to review to form a more certain opinion on Kroger's policies?

MR. ELSNER: Objection. Vague.

A. Ms. Wohl, I would look at the Likert responses on how they feel their practice environment is unsafe, how they don't

have the staff that they need, the staff is constantly being diminished, the staff that is hired doesn't have the qualifications. I'm not trying to criticize somebody that doesn't have qualifications. I'm saying you don't put somebody in a position to take care of things if they don't have the qualifications to do that. That's an incredible amount of pressure. Why is that a pressure on pharmacists? Because I don't care how many technicians you have and how capable they are or incapable they are, everything that's done by that technician, responsibility for making sure that is safe, falls on who? It falls on the pharmacist that's there on duty, in charge at that point in time. So they have incredible responsibility for their own actions as well as every action that's done by people that work with them that don't have the pharmacy degree.

Q. Do you have any opinions on any other Kroger policies?

MR. ELSNER: Objection.

A. I sure do.

If you have a salary-based

employee that has a 40-hour workweek but that individual has to work 60 hours a week without being paid in order to take care of patients, there's something wrong with that policy. If you have somebody that is filling 300 prescriptions in a defined period of time without help or assistance and you can't get additional staff, you can't get additional support, I certainly feel that that's an inappropriate policy. It doesn't matter if it's focused simply on Kroger's. It's CVS. It's Walgreens. It's Rite Aid. Pick your favorite chain. That's what the problem is. People are not getting the care that they need in pharmacies. But if you're looking at Kroger specifically, having that kind of a policy in place makes no sense whatsoever for patient safety, which is what Kroger is supposed to be all about. It flies in the face of what their, quote, unquote, focal goal is.

Q. Where are these policies you're talking about?

A. The policies were expanded upon by individual pharmacists, okay. It might not be

a written policy, but if you're a pharmacist and you're trying to take care of patients and you can't do it within 40 hours but you have to do it in 60 hours, I don't care if Kroger has a policy or not. If that's the expectation, that you want to take care of people in a safe environment, you're going to do it until you just can't do it anymore. So if you have somebody that's salary and they work extra, pay them overtime, don't diminish the staffing. And many, many of the Kroger pharmacists talked about diminished staffing, cutting back on staff, inability to get extra help. That is to me -- whether or not it's a written policy, it's a policy that people had to abide by.

Q. So you are looking at the survey comments with respect to Kroger and interpreting those as Kroger-wide policies?

A. I'm looking at individual responses that Kroger pharmacists made about metrics, and those individual comments -- I don't care if there were ten or 20 or 30, if there were five of them, if there were four of them, that indicates to me a concern.

Q. Does it indicate a corporate policy?

A. If people have metrics that they can't abide by but they're imposed upon them, that's a corporate policy. You have to have metrics in order to be evaluated positively. And if you don't have those metrics, you're supposed to make them up to look like you're better than you actually are.

Q. I understand your opinion on Kroger's metrics, what you assume them to be, but you mentioned two other policies, and one is somebody having to work a 60-hour workweek and another of somebody filling 300 prescriptions without staff. What policies are those?

MR. ELSNER: Objection. Asked and answered.

A. If you have metrics that you have to fill prescriptions within a defined period of time, and you have 300 prescriptions that you have to fill and you don't have the staffing and you don't have the support, there's a policy there that needs to be fixed. And the policy is that you expect people to do

too much with too little and do it real quick or you're going to get docked.

Q. Drawing these conclusions from the comment section of these surveys, is this typically how you analyze survey results?

A. I'm sorry. I didn't quite hear the first part of your question.

Q. I said drawing conclusions like these from the survey comments, is this typically how you analyze survey results?

A. When I analyze survey results, I look at every part of the survey; how it was constructed, what it was supposed to measure, and what the results are supposed to be used for. So when I looked at the written comments, did they have any validity with what people were saying in their Likert scale responses. So when they talked about unsafe work conditions, not enough staffing, and then you combine that with what I found and read in the verbal comments, it gives credibility to the entire survey. It makes it valid. It makes it reliable. I don't look at these individually as item A or item B. I look at item A plus item B equals what.

Q. If you can turn to page 20 of the report. At the top of the page there's a sentence that starts out "Additionally," and you state that "the pharmacy regulations and practice standards apply the same to all pharmacies."

Do you see that?

A. Yes, I do.

Q. What is your basis for this comment?

A. Okay. If you look at what the practice standards are for the practice of pharmacy in an institutional setting, in a long-term care setting, in an independent retail pharmacy setting, the environments are different, the practice components might be a bit different, but the expectations regarding regulatory components are the same, that you have things happening in a safe and appropriate manner.

Q. You go on to say that "dispensing work flows are similar no matter the pharmacy." What's your basis for that comment?

A. I'm sorry. Where do you see that?

Q. At the end of that sentence that begins "additionally," the last phrase is "dispensing work flows are similar no matter the pharmacy" on page 20.

A. So what's supposed to happen when a prescription is filled, so how is it processed, how is it packaged, how is it delivered to the patient, what is the patient told about the medication. If the work flow expectations for that dispensing is done in a community pharmacy or a chain setting or a food market-based pharmacy or a hospital outpatient setting, those regulations are applicable across the board regardless of what the environment is. Those are state regulations on how pharmacy needs to be practiced in a particular state. It doesn't matter what the environment is.

Q. So when you talk about work flow, you're talking about the regulations and the law that pharmacies have to follow when they dispense, right?

A. That's correct.

Q. And is that also what you're referring to when you talk about the

standardization of large chain pharmacy work loads?

A. Where do you see that?

Q. That's the very next sentence, page 20.

A. And I think what I'm referring to there is how the respondents from the Likert scale standpoint responded if they were in a food market-based pharmacy or a large chain environment versus independent pharmacists or institutional practices. So hospital pharmacists wouldn't have this kind of concern and they said I'm glad I don't work in a chain or I'm glad I don't have those constraints. I have this ability to report to a supervisor that there are unsafe working conditions and that supervisor has to deal with the issue rather than have it being ignored like you might see in a chain environment.

Q. What's your basis for saying that you would see these concerns ignored in a chain environment?

A. Based upon what the verbal responses were and the fact of the Likert scale items where they indicated they didn't

have anybody that they could talk to about an issue, A, B, C or D.

Q. But we're talking about, when you say that, the respondents were not making generalizations as to all Kroger pharmacies or Ohio pharmacies, right?

MR. ELSNER: Objection.

A. Again, there are some pharmacists in those pharmacy environments that were perfectly satisfied with what they were doing. I just think that because there was a concern raised, on an average based on percentage of respondents in Likert scale items, then you couple in the verbal responses, that adds validity and reliability to what the survey was doing.

MS. WOHL: Can I have the last question I asked read back, please?

(Record read.)

Q. Could you answer that, Dr. Fincham.

A. Again, that's not what I'm saying because some individuals felt that they had a really nice work environment. There was a separation -- you know, regardless of where

the individual practiced, they weren't all the same responses.

Q. Okay. I think the answer to that question is no, you were not making generalizations. I just wanted to make sure I understood what you were saying.

MR. ELSNER: Objection. Strike the colloquy. That's not a question to the witness and that's not what the witness said.

Q. Okay. I'll ask you again. Can you generalize the negative comments about Kroger to all Kroger pharmacies?

MR. ELSNER: Objection.

A. My point is that if some pharmacists in Kroger express this concern, that should be a major concern for Kroger corporate. And, in fact, because of these two studies, the 2021, the 2020 study done by the Ohio Board of Pharmacy, what did Kroger do? They did their own study of their own pharmacists and the similar results were found. So, in my estimation, Kroger felt that this was a significant issue that they needed to look at within their own group of pharmacies and pharmacists only. So whether

or not I generalized it, Kroger did. They felt they needed to analyze their environments for their pharmacists.

Q. In the next paragraph you quote Dr. Selzer's opinion that it would be an unsubstantiated leap to believe that the answers to the survey questions reflect pharmacists' specific concerns with dispensing of opioids, and you follow that with it would be an unsubstantiated leap to suggest that a pharmacist would not have controlled substances and opioids in mind when answering these questions, right?

A. That's correct.

Q. Then you disagree with Dr. Selzer's opinion that you cannot take the results and -- from this survey and assume that pharmacies -- pharmacists were talking specifically about their concerns with dispensing opioids?

A. I don't agree with her statement.

Q. Okay. And you are saying there that it's your opinion that they did have opioid dispensing in mind when answering these questions; is that right?

A. That's one of many factors that they had in mind. If we go back to Table 1, those factors are not mutually exclusive. They're all inclusive of what pharmacists consider when they practice on a day-to-day basis, on an hour-to-hour basis. It's constantly impacting them in the back of their mind.

Q. So within Table 1 is a whole list of things that's constantly impacting them in the back of their mind that they would have in mind when talking about their practice, but we can't isolate any of those one tasks or duties and say that these results were specific to any one of those; is that right?

MR. ELSNER: Objection.

A. I don't know why you'd want to separate those out, because the pharmacist sure doesn't. If they can't take a break, if they can't go to the bathroom, how are they going to do those other 15 items and do them efficiently, effectively and with the focus of the patient in mind. If they can't have a work break, if they can't eat lunch, if they're a diabetic, how are they supposed to

handle that stuff? They can't. So it's not fair to just separate one thing out of another. All those factors impact them each and every time each and every minute of their practice site. The biggest worry the pharmacists have is am I going to make a mistake that's going to hurt a patient, and then, secondly, is that going to make my ability to practice as a pharmacist impossible because I'm going to be fired, I'm going to be let go, I'm going to be released from my responsibilities. They think about that from minute one to the last minute they leave the door.

Q. Am I correct in saying that patient safety encompasses opioid dispensing and, therefore, it's reasonable that pharmacists would generally have all aspects of patient safety in mind when answering patient safety questions?

A. I absolutely agree with that a hundred percent.

Q. So what I'm hung up here on is the word "specific." You know, specific to me means isolating any one of those and saying

the comments and the answers are specific to any one isolated task or duty. Are you saying that these comments and survey results reflect specific concerns with opioid dispensing?

A. They reflect all the concerns. Included in those concerns is opioid dispensing. You can't separate that out from the concern that pharmacists have. If you have metrics that you have so many prescriptions that you have to fill and you have a patient present with an opioid prescription and you have to go through the OARRS system, you have to look at whether or not they traveled so many miles, you can't separate it out, it's all inclusive, it impacts everything they do each and every minute of their practice day.

Q. When Dr. Selzer talks about breaking down survey results by demographics and how that might be useful, it's your opinion that that is not important here because pharmacy is gender neutral; is that right?

A. That's absolutely how I feel, yes.

Q. So it would be of no significance

to you if more men than women answered in a certain way in this survey?

A. In my mind a pharmacist is a pharmacist regardless of what their gender is and their responsibilities are exactly the same.

Q. So as a survey expert, if the majority of the complaints were from younger pharmacists or male pharmacists, would that have no significance to you?

A. I think what was significant was the demographics that they did measure, so how long had somebody been in a practice environment, how many years have they practiced. Those are the things that are important to me. Whether or not somebody was 25 or 65 doesn't have any impact whatsoever on how they're supposed to do what it is they're supposed to do to provide patient care and patient-safe environments.

Q. Is that your general view on demographics of survey respondents in, you know, the pharmaceutical area or just this one specifically?

MR. ELSNER: Objection.

A. We're talking about the practice of pharmacy in the state of Ohio. If we're looking at dosing of men versus dosing of women, dosing of somebody that's 85 versus somebody that's 15, the demographics and age and gender are really crucial, but if you're talking about the practice of pharmacy, it doesn't matter what somebody's gender is, it doesn't matter how old they are. The responsibilities, the duties, the expectations are exactly the same. So it depends upon the study and the type of study that you're assessing. And, again, I don't want to be overly critical of Dr. Selzer, but she has no idea of how pharmacy is practiced or what the expectations are. It doesn't mean she's not a world class, famous expert on polling. She doesn't know anything about pharmacy so she doesn't have the ability in my estimation to make an evaluation of why demographics were important.

Q. We've covered some of this next area in our talks about generalization and whether or not you can take the survey results and make conclusions about the

non-respondents, but I want to ask it in these terms. You say that the question of whether the results of this survey can be extrapolated to all pharmacists is not very relevant, correct?

A. That wasn't the purpose of the study, no, ma'am.

Q. Okay. So it is not relevant whether the experience of the pharmacists who responded to the survey represents the experience -- the experiences of all pharmacists in Ohio?

MR. ELSNER: Objection.

A. Again, the premise of the study was to get an assessment of workplace safety from the pharmacist's point of view.

Q. Of general workplace conditions, correct?

A. All workplace conditions, yes.

Q. On page 23 --

THE WITNESS: Would it be possible to take a break, please?

MS. WOHL: Yes. Let's take a break. We can go off the record.

THE VIDEOGRAPHER: Off the record,

1:37.

(Recess had.)

THE VIDEOGRAPHER: On the record, 1:47.

BY MS. WOHL:

Q. Dr. Fincham, did you have any experience with Kroger pharmacies prior to reading the results of these surveys?

A. No, I did not.

Q. Have you ever known any pharmacist who worked at Kroger?

A. Yes, I do.

Q. And what's the nature of your relationship with them?

A. Let me --

MR. ELSNER: Objection.

Go ahead.

A. When I was at the University of Kansas School of Pharmacy as a dean, I received a grant from the National Association of Retail Druggists to evaluate pharmacists' potential to enhance what it is they did and how they might be reimbursed for that. And one of the groups that I wanted to include to make sure that we were inclusive in the study

design were pharmacists that worked at Dillons, and Dillons is wholly subsidized by Kroger, it's managed by Kroger. At that point in time the pharmacy director, Jane Siebert, was monitoring pharmacy services within the Dillons network, but still Kroger owned Dillons. So my impact through Jane Siebert, the pharmacist that participated in the study, was my interaction with Kroger pharmacists.

So I was also asked to speak to the group of Kroger pharmacists that get together on an annual basis, to talk to them about the future of pharmacy.

So that's my interaction with a Kroger subsidiary, but yet I considered it to be Kroger pharmacies and pharmacists.

Q. Can you tell me more about your experience in getting together with Kroger pharmacists to talk about the future of pharmacy?

A. At that time Ms. Siebert asked me to come to speak to the pharmacy group about what I perceived as the future of pharmacy and the opportunities for supermarket-based pharmacy to have a major impact in how

pharmacy was practiced in the state of Kansas.

Q. Did you form any opinions about Kroger pharmacies or pharmacists during these relationships?

MR. ELSNER: Objection.

A. I have a very positive view of pharmacy and pharmacists, period, so I welcomed the opportunity to work with those Dillons pharmacists to help them realize that the University of Kansas School of Pharmacy was focused on them and their practice and to do what I could to make their practice better and enhanced. So my view of Kroger pharmacists through the Dillons group was very positive. It remains positive to this day.

Q. On page 24 of your report -- actually, it's the bottom of 23 and then on to 24, that sentence. "The Board's characterization of the survey findings as reliable and 'striking' should be given substantial weight."

Do you see that?

A. Yes, I do.

Q. So, in your opinion, the surveyor's findings are to be given

substantial weight in analyzing the survey?

A. That's the view of the Ohio Board of Pharmacy, looking at this survey and the results.

Q. And I'm asking for your opinion. What's the substantial weight that you're talking about giving these -- this view?

A. I think that the survey was valid, it was reliable, and I based my assessment of validity and reliability based upon other studies that were done in different states as well as the national survey of pharmacists' working conditions. They were very similar in the outcomes. Some of the questions were virtually the same. So the Kroger -- excuse me. The Ohio Board surveys were based upon other work that had been done in other states and it added, in my estimation, to the validity and how important the results were.

Q. Well, the substantial weight that you're talking about here is the Board's characterization of the survey findings as reliable and striking, so it doesn't sound like you're talking about these other surveys but it's the board's own assessment of its

survey is what you want to give substantial weight. Am I reading that correctly?

A. Yes. It's how the board viewed the survey results in 2020 as well as 2021.

Q. Okay. So the fact that the Ohio Board of Pharmacy found the surveys to be reliable is a significant aspect of your own conclusion that the surveys are indeed reliable?

A. It's one component of how I assessed how reliable or valid the survey was, yes.

Q. The surveyor's own opinion of its survey?

A. That added to my ability to look at this as being a valid and reliable series of studies, yes.

Q. And you also seem to be saying that the Board's actions in response to the survey validated the survey results; is that correct?

A. Yes.

Q. So how would subsequent actions of a surveyor make survey results more reliable?

MR. ELSNER: Objection.

A. Ms. Wohl, if we go back to how surveys are initially constructed, you look at what it is you're going to examine, you look at what you're going to ask, and then you look at how are the results going to be used. And so, in my view, looking at this from that standpoint, when I see that the Board of Pharmacy took the results of this survey and started the process of trying to make recommendations on improving pharmacy practice indicates to me that this was a valid study, it was a reliable study, and it was certainly carried out from a design standpoint and a construction standpoint in a very appropriate manner.

Q. So if the Board had not taken actions in response to the survey, would that have made the survey results less reliable?

MR. ELSNER: Objection.

A. That's a -- that's a question that I really can't answer. I can only talk about what was done and how it was done and why that made my assessment of this whole survey process as being very, very valid.

Q. Don't you need to make sure you

have valid data before you take appropriate actions?

MR. ELSNER: Objection.

A. I don't mean to be disrespectful. That's a rhetorical question. I don't know what it is that you're trying to examine or what you're talking about. Can you be more specific, please?

Q. Well, let's say the data from the survey is biased or unreliable in some way. If the organizations are acting on biased data, then they're making decisions on flawed data, correct?

A. And that's where Dr. Selzer and I agree, that this was a series of valid questions, it was appropriate for the Board to do these surveys, there was no evidence whatsoever that there was any bias or that there was anything that was done to alter the data to have it to -- to look different than it was actually supposed to appear.

Q. But my question is a little different. I guess what I'm asking here is that you've got survey results that can't be generalized to a broader population. They are

the results of the people who took the survey and that's all. If the Ohio Board of Pharmacy is acting on survey results that are not representative of a broader population, then is the data or the action -- are the actions a result of flawed data?

MR. ELSNER: Objection.

A. I respectfully disagree with your whole premise. That's not the purpose of what this study was intending to do. It wasn't to generalize pharmacy practice. It wasn't to generalize a specific region of the state of Ohio. It was simply to get an appreciation of what the workplace environment and factors impinging on patient safety were. And the Board took those results -- they didn't bias those results. They didn't alter those results. They looked at the results that were both Likert scale in origin as well as the verbal written responses and tried to make recommendations based upon what those particular studies found. So how they processed this through from start to finish in my mind was very, very appropriate.

And to amplify that, if this was

looked at as something that was positive in these two years, why would Kroger then do a similar study if they didn't feel that this had some validity and needed to be done and needed to be expanded upon? That adds to me the whole issue of how this was really credible. It was important to Kroger, as well it should be.

Q. What exactly in your report here is rebutting something that Dr. Selzer wrote?

MR. ELSNER: Objection.

A. I'm going to respectfully request that you would have to go through this page by page. I was very specific in my assessment of why Dr. Selzer was wrong in some of her assessments. And if you want me to go through this page by page, I can certainly do that, but basically she didn't review the policy recommendations of the workload advisory committee or other steps took in response to the survey results. This is on page 24. She should have done that.

Q. Does that relate to an opinion that she had that you are rebutting? I know you think that she should have done more.

MR. ELSNER: Whoa, whoa. I'm going to raise an objection. I'm not sure that's a question.

Q. Okay. Does that relate to an opinion that she had that you are rebutting? That is the question.

A. And, again, respectfully, we can go through this page by page and I can -- I went through why I didn't agree with Dr. Selzer. It's no criticism of her as a pollster. It's just she didn't do what she should have done to analyze these surveys. So her assessment of the survey in general was totally inappropriate, it was wrong.

Q. I don't think we need to go through it page by page, but isolating what you're saying here on page 24 of the things that she did not do, like review the policy recommendations of the workload advisory committee or other steps that the Board of Pharmacy took in response to the survey results, you believe she should have done those, correct?

A. Yes.

Q. So what part of her opinion

relating to that are you rebutting?

MR. ELSNER: Objection. I'm sorry. I don't understand the question.

If you understand the question, you can answer. I don't understand it.

A. I did not understand the question and I don't think it's fair to expect me to cherrypick one particular sentence in one particular paragraph on page 24 and make my assessment of why I think that what she did is invalid. It's the whole report, all the pages --

Q. Everything?

A. -- that in my mind refute what Dr. Selzer stated about this study and study process.

Q. At the end of your report, on page 30, in the middle of the second paragraph, if I can draw your attention to a sentence there.

A. What page?

Q. Page 30.

You state that "The survey information, when placed in the context of regulatory obligations of controlled substances, pharmacy practices and ongoing

opioid epidemic, were persuasive."

So let me ask you first about placing the survey information in specific contexts. You agree that it wasn't specifically targeted to the regulatory obligations of controlled substances, pharmacy practice and opioid epidemic, correct?

A. I agree with that.

Q. Okay. So you have to place it in that context, and that's something you're able to do with your pharmacy expertise; is that right?

A. And, respectfully, we could take ongoing opioid epidemic out and talk about dispensing cancer chemotherapy or dispensing drugs that have known interactions with other drugs. So you could -- you could go through any number of things and talk about why it was persuasive. But from the standpoint of controlled substances, it certainly is applicable.

Q. And you sort of answered my next question, which was you can put this information into other contexts, correct?

A. Yes, you can.

Q. And make assumptions and draw conclusions; is that right?

A. I'm not making an assumption. I'm basically concluding that that's the case.

Q. Okay. Dr. Selzer, in her report, says that some pharmacists may have concerns about opioids but this survey did not purport to measure that. Do you disagree with that?

A. That's what Dr. Selzer said.

Q. Do you disagree with what she is saying there?

A. Can you ask the question? I'm sorry. I don't quite understand what you're asking me.

MR. ELSNER: She's asking you whether you agree or disagree with her opinion, but go ahead and ask the question again.

Q. Dr. Selzer says that some pharmacists may have concerns about opioids but the survey did not purport to measure that. Do you agree or disagree with that?

A. I agree with that.

Q. And she states that we cannot be certain that the data reflect a larger pool

than the pharmacists who responded. Do you agree or disagree with that?

MR. ELSNER: Objection.

A. I think we can agree with that. We could also agree that there were pharmacists that didn't respond that would have had very similar responses, but that wasn't the purpose of the study.

Q. Explain that opinion to me, we can agree that pharmacists who didn't respond had very similar -- would have had very similar responses.

A. They could have had similar responses. They could have had dissimilar responses. That doesn't impact at all the validity of this study, which was to get a general perception of workplace safety and conditions that impacted pharmacists' ability to practice safely.

Q. Okay. I want to make sure I understand that statement. We don't know what the pharmacists who did not respond would have said, correct? Is that what you're saying?

A. That's correct.

Q. Okay. The Oregon Board of

Pharmacy survey that was sent as a supplement to the materials you considered, did you consider this survey before you wrote the opinion or in writing your opinion?

A. It was after the fact.

Q. And does this survey impact your opinions?

A. It -- do we have a copy of that that I could examine? I don't have a copy of that in front of me.

Q. Okay. It didn't make it into the exhibit folder.

MR. ELSNER: We can make it -- since it was produced late, I'm happy to -- do you want to go off the record for a minute? We can pull that for him.

MS. WOHL: Sure.

MR. ELSNER: Do you want to do that now?

MS. WOHL: Yeah, let's go ahead and do that.

THE VIDEOGRAPHER: Off the record, 2:05.

(Recess had.)

THE VIDEOGRAPHER: On the record.

BY MS. WOHL:

Q. Dr. Fincham, do you have the Oregon Board of Pharmacy survey in front of you?

A. Yes, I do.

Q. And this was the supplement that was sent to me as an additional material considered by you; is that correct?

A. Yes.

Q. When did you first review this?

A. I first saw it yesterday evening.

Q. And how did you come across this?

A. I was provided a copy here at the firm.

Q. By counsel?

A. Yes.

Q. And was the first time you reviewed this document yesterday evening?

A. That's correct.

Q. Do you have any additional opinions now that you've considered this survey report?

A. My opinions would remain the same as I indicated in my report.

Q. Does this Oregon survey or the

report on it have any significance to your opinions in this case?

MR. ELSNER: Objection.

A. I think it just indicates that the findings of this survey done in 2011 are not that different than what was found ten years later in a different state.

Q. And can you explain that significance to me?

A. I said that it really wasn't significant from the data that was found in this study versus what was found a decade later. The results are very, very similar. This study did not have some of the demographic components that the two surveys that were reviewed for the State of Ohio had. So when they talk about practice site, they were very limited in what they indicated. There were just three particular sites as opposed to the study that was -- studies that were done in Ohio. They broke down the practice site. Here talking about the Table 3 on page 8, they just say community chain. They don't break it down to food market-based pharmacy, et cetera.

Q. The fact that you say -- as you say, the results aren't that different between this 2013 survey in Oregon and the Ohio 2020 and '21 surveys, does that have any bearing or support of any of your opinions in your report in this case?

MR. ELSNER: Objection.

A. And, again, I indicated I didn't use this document in any way, shape or form in the formation of my report and the writing of such.

Q. So it doesn't support your opinions even after the fact, it is just an ancillary document that you looked at?

MR. ELSNER: Objection.

A. I think I'm repeating myself, but I think that this validates the findings that were done in the Ohio study, the Missouri study, and the national study that was done several years after this by the American Pharmaceutical Association.

Q. And I apologize if you're repeating yourself. That is not what I heard from your prior answer. So this Oregon survey validates the results of all the other surveys

that you mentioned in your report, including the Ohio Board of Pharmacy survey?

A. It adds validity to the findings, yes.

Q. And in what way?

A. If you look at the qualitative results, you know, the responses that are on page 19, 20, talking about dissatisfaction with the changing pharmacy profession, those kinds of things -- if you look at the quantitative result, it's really -- you show -- again, this is just -- this is a Likert scale of three items, okay, where you have agree, neutral or disagree. And, as a survey design analytic person, you never use a three-item scale. You use a five-item scale, where you have agree, strongly agree, neutral, disagree or strongly disagree. But, again, that's a criticism of this particular study. And if I would have used this study in the report that I provided, I would have specifically hammered in at the fact that you don't use ever a three-item Likert scale when evaluating somebody's opinion or assessment.

Q. So you've got some issues with the

methodology of the Oregon survey but the results still validate the other surveys that you've mentioned?

A. It validates my view that this has acceptability compared to the Ohio studies are the verbal written responses, okay. I have real concerns about how some of these metrics were designed, how metrics -- excuse me, how the questions were, which is a three-item Likert scale. That's never done. That's period, end of quotation. It's never done. That's been shown in the literature. If you look at one of the individuals that I quoted, Donald Dillman from Washington State University, he was a worldwide, renowned expert on survey methodology. He will specifically hammer on the need to have more than three Likert scale items as responses. But the verbal responses, the written responses, are similar in tone and structure and nature.

Q. Were any of them specific to Kroger?

A. I have no idea if there are Kroger pharmacies in the state of Oregon, and I

haven't looked at this in great detail. Like I said, I looked at this last night. If I was going to evaluate this, I would thoroughly look at it rather than try to come up with answers here after looking at it for ten minutes here today. That's not fair to me.

Q. You all submitted this to me. I'm trying to figure out exactly what this document is.

A. What did you just say?

MR. ELSNER: Whoa, whoa, whoa. We produced -- let me just clear the air a second. It was something that was provided to Dr. Fincham. He reviewed it. We provided it to you because it's something he considered.

It's completely fair game for her to ask you questions about it because it's something you considered. She wants to know whether you're going to rely on it at trial and what you're going to say about it and how it compares with everything else.

So I'm sorry about that, Ms. Wohl. Please continue.

Q. Do you need some time to look at this report? I don't have very many more

questions on it.

A. What specifically were you going to ask me, and then I'll try to respectfully kindly answer appropriately?

MS. WOHL: Can I ask the reporter to read back my last question on this report?

(Record read.)

Q. I was asking about what you know about this survey, if there are any specific comments to Kroger.

A. And I don't know that. I can't say that. I don't have any idea.

Q. Do you know whether there were any specific questions or comments specific to opioids or the dispensing of controlled substances?

A. And, again, because I didn't look at this report in my report, I have no idea what's in it.

Q. Okay.

A. I didn't really review it last night at all.

Q. Okay. I take it this is not something you would be relying on to support your opinions if we were to go to trial in

this case?

A. What I would request respectfully is the ability to look this over, and if I need to change something in my report, I would do so and indicate the sourcing for why I wanted to change it.

MS. WOHL: Okay. Can we take a five to ten-minute break?

MR. ELSNER: Sure.

THE VIDEOGRAPHER: Off the record, 2:22.

(Recess had.)

THE VIDEOGRAPHER: On the record.

BY MS. WOHL:

Q. Dr. Elsner -- sorry. Dr. Fincham. I didn't mean to promote you. Do you plan to testify about any opinions that you have that are not written in your report in this case?

A. At this point I don't have anything that -- that I would add, but that doesn't mean that something might come up that I'd want to add later on.

Q. As we sit here today, there's nothing that you would plan to amend in your report?

A. No.

MS. WOHL: I don't have any further questions for you. Thank you.

THE WITNESS: Thank you for your courtesy today. I appreciate it.

MR. ELSNER: We're not quite done. Don't compliment her too soon.

EXAMINATION OF JACK E. FINCHAM, Ph.D.

BY MR. ELSNER:

Q. Dr. Fincham, I just have a few questions that I just want to walk through with you.

We talked a little bit about your experience with designing surveys and interpreting surveys.

A. Yes.

Q. And one thing that we -- that didn't come out in the deposition is do you serve as an editor or a referee for any peer-reviewed journals?

A. At this point in time I do, yes. I've been asked probably six to eight times a year to review a publication for potential publication. It's journals all over the world.

Q. Okay. And just roughly, how many journals have you served as an editor or referee on?

A. I would say 60 in total. That's an estimate.

Q. Okay. And in your role as an editor or a referee of peer-reviewed work of other professionals, have you examined survey designs and interpreted survey results in that role?

A. Yes, I have.

Q. Okay. And do you have an estimate as to how many times you've done that?

A. I would say well over 250 times.

Q. All right. And within the context of serving as an editor or referee for these journals, has it been the practice that people have relied upon your expertise in this area to review articles that focus on particular types of surveys, interpreting them and developing them?

A. That's certainly the case, yes. I'm fortunate to be in that position, yes.

Q. Okay. And have any of those articles that you've refereed or edited for

peer review journals dealt with field studies?

A. Yes, most certainly they have, and not only in my capacity as a reviewer for journals, but I'm also on several advisory committees for the Canadian Institutes of Health & Research, which is equivalent to our United States NIH and AHRQ, but in that capacity I've evaluated numerous surveys as part of grant resubmission processes.

Q. Thank you.

And have you ever been asked to speak about survey design and the interpretation of surveys?

A. Yes, I have. I've been fortunate to have had those opportunities in Australia; in Vietnam; in Scotland; in Glasgow at the University of Strathclyde; in Aberdeen, Scotland; in Turkey; and in the United Kingdom, specifically Oxford.

Q. Thank you.

Is the use of a field study a reliable and professional form of surveys?

A. Yes, it is.

Q. Is it acceptable in the professional field -- in your professional

field of survey design and interpretation to use a field study?

A. It is most appropriate and it's widely used, yes.

Q. Okay. Are there other experts in the field that have interpreted and used field studies as part of their work other than you?

A. The individual that -- that I rely upon, and it's not just me that relies upon him, but it's Donald Dillman. It's Washington State University. And in 1988 he wrote a book called "The Total Design Method." And in that book -- it's a comprehensive, evaluative document/book that looks at various types of survey research methodologies, when it's appropriate to use them, how they should be used, and what the impact of those has been. He's also followed up with additional books that I've referenced in my report. But Donald Dillman is, in my estimation, the gold standard reference point, and this is somebody that I was involved with as a student at the University of Minnesota in the research, design and methods courses that I took there, and Donald Dillman's book was priority number

one in those courses.

Q. Okay. In interpreting and analyzing the Ohio Board surveys in this case, did you rely upon the same methodology that Dr. Dillman, Mr. Dillman used in his texts?

A. Yes, I did, and that's basically an assessment of why this study is being done, what are you going to ask in the study or what's the results of the study going to be used for.

One of the key components that Dr. Dillman stresses in his book is are the questions that are asked understandable for somebody that's going to be reviewing them, so is the number of words, you know, that has ten syllables, you know, out of line. So it's something that has to be understandable, there has to be validity on the use of proper grammar. And, again, I focused on -- in the last series of comments about -- he talks about Likert scale and how many items you should have, what are the benefits and risks if you don't have a certain number of those kinds of items, whether it's three, five, seven, et cetera. So he goes through that in

great detail and explains why it's important.

In all of the things that I just mentioned about Dr. Dillman he references published works that have been published and are published in the field of survey research methodology and questionnaire design.

Q. And in interpreting the questions that were used in the Ohio Board of Pharmacy surveys, did they meet the standards as described by Dr. Dillman and as you've expressed as being professional?

A. They most certainly did, and Dr. Selzer agreed with how the questionnaire's items were designed as being appropriate, fair and nicely done.

Q. And do you have an opinion, Dr. Fincham, as to whether or not the Ohio Board of Pharmacy surveys were reliable and appropriate for use in this context?

A. I believe that they were entirely appropriate based upon how they were designed, what their intended purpose was to be, and how they were reflective of other studies that had been done. So the Ohio group relied upon survey questions that were done in Missouri as

well as elsewhere as well as the national study. So that to me -- if you can use previously approved and recognized questions as being appropriate in your particular study, that adds more reliability and validity to what it is you're doing and the results that you find.

Q. Were there other signs of reliability that you found in analyzing the Ohio Board of Pharmacy surveys other than comparing the survey to other surveys that were conducted?

A. I just think that from my assessment, if you look at who was responding to the questionnaire items and who was administering the surveys, it was the Board of Pharmacy that has oversight of all the pharmacists in the state, the pharmacists knew that when they were responding. To me it indicates that they were going to give responses that were heartfelt and that they hoped would make a difference in how their profession was -- was practiced.

Q. How many surveys did the Ohio Board of Pharmacy send out in this context?

A. There was a study in 2020 as well as 2021.

Q. And how did the two studies compare with one another?

A. I think they were very, very similar as far as their responses, and there might have been some minor differences in the number, but you don't have any idea of who might have been a new pharmacist that wasn't able to respond in 2020. But if you look at the percentages for the Likert scale items, they're very, very similar, and most certainly the verbal responses were similar.

Q. And do the similarity of the responses between the survey in 2020 and 2021 have any impact in your opinion as to the reliability of the survey?

A. They did have a major impact on how I viewed them as being reliable and valid, and to further validate it, the Ohio Board of Pharmacy used these to make some policy potential recommendations based upon what they found. That indicates to me that they felt it was valid.

Q. There seemed to be a suggestion

from counsel from Kroger that we weren't sure whether the only respondents to the survey were disgruntled pharmacists. Do you remember that line of questioning?

A. Yes.

Q. Okay. Do you agree that only -- are you able to tell one way or the other whether the respondents to the survey were all disgruntled pharmacists or not?

A. If you look at the Likert scale items that had five data points that they could choose, strongly agree, agree, neutral, disagree, strongly disagree -- if you look at the range of responses, there were some people that were perfectly very satisfied with what the question was asking, and so I think the range of responses indicates to me that it wasn't just a negative response that was provided, it was a valid response across the board of people that were satisfied, highly satisfied, et cetera, and that had some variability based upon what the practice site was. And because there were numerous people that were responding from different practice sites that had the wide range of responses

indicates to me that the questions were valid and people felt comfortable answering them based upon their work environment.

Q. And did the outcome of the Ohio Board of Pharmacy studies indicate a difference based on how people felt about a safe work environment based on whether they worked in a grocery store setting versus other types of job sites?

A. If you look in general at the chain environment, whether it is CVS, Walgreens, those corporate chains, or food market-based responses, they were very similar and they were quite different than what you saw in independent pharmacy practice as well as the institutional practice. There was more dissatisfaction in general expressed by the chain environment pharmacists, whether it was food market-based or general chains.

Q. And was there some indication within the survey results as to why pharmacists working in those environments felt that way?

A. If you look at the verbal written responses, it validates the point that I guess

I was just trying to make, that people said I'm glad I work in an institution and not in a chain environment or I left the chain environment to go work elsewhere because I couldn't deal with the pressure, et cetera.

Q. I think that you had mentioned Kroger had done its own study, its own survey of its pharmacist employees. Did you review those surveys?

A. I did.

Q. Do those survey results have any impact one way or the other on how you felt about the reliability of the Ohio Board of Pharmacy?

A. Because the results were very similar in how the respondents both responded to the Likert scale as well as the written responses, that indicated to me that there was validity in the studies that the Ohio Board did exclusive of the Kroger study.

Q. There was some demographic information collected of respondents in the Ohio Board of Pharmacy survey; is that right?

A. Yes.

Q. Can you give us some examples of

those?

A. Sure.

Some examples would be practice site, and I just referenced those, independent, chain, grocery store pharmacy, institutional practice, long-term care. So that's a demographic item. Also, the number of hours that were worked, the length of time that you had been in a specific position, the number of orders that you processed on -- in a time period. So those demographic items were included.

Q. And did you review the number of hours worked or reported to have been worked by pharmacists in the grocery store setting versus other job sites?

A. Yes, I did.

Q. And what did you determine from reviewing that data?

A. It wasn't a surprise to me, but it's still a bit of a shock in that there was a widely different number of hours that institutional pharmacists practiced and community pharmacy owners practiced versus the chain versus the food market-based pharmacies,

and certainly the long-term care pharmacies were much less as well.

Q. And do you think there's any bearing on the number of hours you work based on -- compared to whether or not you feel you're working in a safe work environment?

A. I think as a general rule, the more hours that you work, that just adds incredible pressure to the work environment, and it certainly impacts patient safety because you just -- again, regardless of how smart you are, how efficient you are, the number of hours that you're in place has a tremendous impact upon pharmacists and how he or she carries out their responsibilities.

Q. With respect to the number of prescriptions filled in a shift, was that a demographic piece of information that the survey sought?

A. It was, and it was -- in my estimation -- it's my point of view, but it was incredible the number of prescriptions that were to be processed, and sometimes in a defined period of time.

Q. And was there a difference between

job settings, between the number of prescriptions you were to fill in a grocery store setting versus other job settings?

A. There was a vast difference.

Q. In what way?

A. In that the chain environment, whether it's food marked-based or independent chains, was much, much higher. And another factor that I didn't mention that was a demographic point were the number of ancillary personnel. So pharmacy technicians varied dramatically from site to site.

Q. And do the number of prescriptions that a pharmacist fills in a shift, does that, in your opinion, have any impact on safe patient care or safe work environment?

A. It has a dramatic impact.

Q. In what way?

A. Just simply because of the number that have to be processed. And we went through Table 1. Some of those factors have applicability to each and every one of those prescriptions. So if we're talking about hundreds, 300s -- somebody mentioned a defined period of time. That's just an excessive

workload.

Q. Dr. Fincham, outside the context of a pharmacy setting, are there any other types of settings where there are surveys that are done of workplace issues where they ask about a safe work environment?

A. There most certainly are, and just some examples might be individuals that work in a plant that manufactures automobiles or manufactures computer components or any other type of a commodity that might be produced. There's very similar types of studies that have been done.

Q. And in all those studies do they list all the specific concerns that an employer -- that an employee might face in the job site that might impact the safe or -- a safe workplace?

A. They are included, yes.

Q. They're specifically included or are they generally?

A. They're specifically included.

Q. There was a mention of -- of the COVID epidemic and -- and its impact on the survey results for the Ohio Board of Pharmacy.

Had there been surveys that had been done prior to the COVID period that also reflect concerns by pharmacists about their working conditions?

A. There are. And one example is the Oregon study that was done in 2011. So that preceded by at least a decade the COVID impact upon pharmacy practice. The American Pharmaceutical Association surveys that have been done in subsequent years prior to the COVID outbreak. So those kinds of surveys have been there. They have been done because there have been workplace issues that have been in play long before COVID came into play.

Q. And, Dr. Fincham, do you have an opinion as to whether or not the surveys conducted by the Ohio Board of Pharmacy met the professional standards for conducting surveys?

A. They do, and it's based upon the referencing that I previously alluded to, the Dillman total design method of surveys from the concept stage to the end stage, where you look at what you're going to do with the data, so it very much followed very appropriately

what Dillon would outline in his outline for decades.

MR. ELSNER: Thank you, Dr. Fincham. I don't have any more questions at this time.

MS. WOHL: I don't have any further questions. Thank you for your time.

MR. ELSNER: Thank you.

THE VIDEOGRAPHER: Nothing else. Going off the record, 2:49.

(Deposition concluded at 2:49 p.m.)

- - - - -

Whereupon, counsel was requested to give instruction regarding the witness' review of the transcript pursuant to the Civil Rules.

SIGNATURE:

Transcript review was requested pursuant to the applicable Rules of Civil Procedure.

TRANSCRIPT DELIVERY:

Counsel was requested to give instruction regarding delivery date of transcript.

REPORTER'S CERTIFICATE

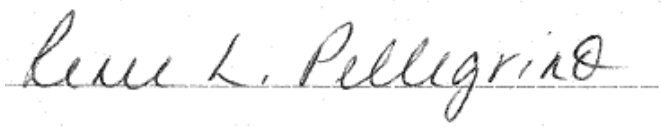
The State of Ohio,)
) SS:
County of Cuyahoga.)

I, Renee L. Pellegrino, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, JACK E. FINCHAM, Ph.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this 6th day of June, 2023.



Renee L. Pellegrino, Notary Public
within and for the State of Ohio

My commission expires October 12, 2025.

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

June 6, 2023

To: Michael E. Elsner, Esq.

Case Name: National Prescription Opiate Litigation - Track 7

Veritext Reference Number: 5894217

Witness: Jack E. Fincham, Ph.D. Deposition Date: 5/24/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5894217
CASE NAME: National Prescription Opiate Litigation - Track 7
DATE OF DEPOSITION: 5/24/2023
WITNESS' NAME: Jack E. Fincham, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

_____ _____
Date Jack E. Fincham, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal

this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5894217
CASE NAME: National Prescription Opiate Litigation - Track 7
DATE OF DEPOSITION: 5/24/2023
WITNESS' NAME: Jack E. Fincham, Ph.D.

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

_____ _____
Date Jack E. Fincham, Ph.D.

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of_____, 20____.

_____
Notary Public

_____
Commission Expiration Date

ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 5894217

PAGE/LINE(S) / CHANGE /REASON

_____

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_____ _____

Date Jack E. Fincham, Ph.D.

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

DAY OF _____, 20_____ .

_____

Notary Public

_____

Commission Expiration Date

f

h

q

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.